5203. Also, petition of Leas & McVitty Co., of Boston, Mass., protesting against an import duty on hides; to the Committee on Ways and Means.

5204. By Mr. TEMPLE: Petition of the Civic Club of Midland, Pa., protesting against the passage of the Yellowstone National Park bill (H. R. 12466); to the Committee on the Public Lands.

5205. Also, petition of the Woman's Club of Ambridge, Pa., in support of the Sheppard-Towner bill (H. R. 10925), the Smith-Towner bill (H. R. 7), and protesting against the passage of the Yellowstone National Park bill (H. R. 12466); to the Committees on Education, Interstate and Foreign Commerce, and the Public Lands.

5206. Also, petition of the Woman's Club of Woodlawn, Pa., protesting against the passage of the Yellowstone National Park bill (H. R. 12466); to the Committee on the Public Lands.

5207. Also, petition of the Woman's Club of Woodlawn, Pa., supporting the Smith-Towner bills (S. 1107; H. R. 7); to the Committee on Education.

5208. Also, petition of the Woman's Club of Woodlawn, Pa., supporting the Sheppard-Towner bills (S. 3259; H. R. 10925); to the Committee on Interstate and Foreign Commerce.

5209. Also, petition of the Civic Club of Midland, Pa., in support of the Sheppard-Towner bills (S. 3259; H. R. 10925); to the Committee on Interstate and Foreign Commerce.

5210. Also, petition of the Civic Club of Midland, Pa., in support of the Smith-Towner bills (S. 1107; H. R. 7); to the Committee on Education.

5211. By Mr. THOMPSON: Petition of the committee on law, Van Wert (Ohio) Lodge, No. 667, International Association of Machinists, asking for the appointment of national boards of adjustment to handle controversies between the railroads and their employees; to the Committee on Interstate and Foreign Commerce.

5212. By Mr. YATES: Petition of Mr. and Mrs. Roy E. Peters, favoring the Fess-Capper bill (H. R. 12652); to the Committee on Education.

5213. By Mr. YOUNG of North Dakota: Petition of the Woman's Club of Barton, N. Dak., expressing disapproval of the Smith bill (H. R. 12466); to the Committee on the Public Lands.

5214. Also, petition of the faculty of the State Normal School of Dickinson, N. Dak., and Woman's Club of Barton, N. Dak., favoring the Smith-Towner bill; to the Committee on Education.

5215. By Mr. ZIHLMAN: Petition of the Merchants' & Manufacturing Association of Baltimore, opposing Senate bill 3390, the Muscle Shoals bill; to the Committee on Appropriations.

5216. Also, petition of the Charles County Sheep Growers' Association, La Plata, Md., favoring the passage of the French-Capper truth in fabric bill (H. R. 11641); to the Committee on Interstate and Foreign Commerce.

SENATE.

MONDAY, *January 24, 1921.*

(Legislative day of Tuesday, January 18, 1921.)

The Senate met at 10 o'clock a. m., on the expiration of the recess.

Mr. SMOOT. Mr. President, at the time the recess was taken on Saturday the Senator from Iowa [Mr. KENYON] was occupying the floor on the packer's bill (S. 3944), and if he desires to go on at this time I have no objection, but if not I should like to proceed with what I shall have to say in relation to the bill, whichever course the Senator from Iowa prefers.

Mr. KENYON. I have no desire at all to speak further on the bill.

Mr. SMOOT. Then I shall proceed.

Mr. KENYON. Does the Senator desire a quorum?

Mr. GRONNA. I hope that no Senator will call for a quorum. I shall be glad to proceed if the Senator from Utah is not desirous of doing so at this time.

Mr. SMOOT. It seems to me that the bill is of sufficient importance and means so much not only to the packers of the country but to the business interests of the country generally, Senators ought to be willing to listen to-day to what is said in relation to the measure.

Mr. KENYON. The Senator does not expect that they will?

Mr. SMOOT. I express the hope that they will. I know that in the past they have not done so. If Senators realized what the bill means—I do not mean to the packers, but to the business interests of the United States—I think they would listen to the debate to-day.

Mr. GRONNA. I wish to say to the Senator from Utah that I had intended to speak on Saturday, but gave way to others.

Mr. SMOOT. So did I.

Mr. GRONNA. There are certain statements which I should like to make for the RECORD with reference to the pending bill.

Mr. SMOOT. So far as I am concerned, I am not going to take all the time, I will say to the Senator.

Mr. CURTIS. If the Senator from Utah thinks there ought to be a quorum here, I suggest the absence of a quorum.

The VICE PRESIDENT. Does the Senator from Utah object?

Mr. SMOOT. No; I do not object.

The VICE PRESIDENT. The Secretary will call the roll.

The reading clerk called the roll, and the following Senators answered to their names:

Ashurst	Hale	Knox	Sterling
Ball	Harris	La Follette	Sutherland
Brandegee	Harrison	McCumber	Trammell
Capper	Henderson	McLean	Underwood
Curtis	Johnson, Calif.	Moses	Wadsworth
Dial	Jones, Wash.	Nelson	Walsh, Mass.
Dillingham	Kellogg	Page	Walsh, Mont.
Edge	Kendrick	Robinson	Warren
Elkins	Kenyon	Sheppard	Willis
Gooding	Keyes	Sherman	
Gronna	Kirby	Smoot	

Mr. HARRISON. I wish to announce that the Senator from Oregon [Mr. CHAMBERLAIN] and the Senator from South Dakota [Mr. JOHNSON] are absent by reason of illness.

I wish also to announce that the Senator from Virginia [Mr. SWANSON] and the Senator from Kentucky [Mr. BECKHAM] are absent on official business.

The VICE PRESIDENT. Forty-two Senators have answered to the roll call. There is not a quorum present. The Secretary will call the roll of absentees.

The reading clerk called the names of the absent Senators, and Mr. OVERMAN and Mr. PHIPPS answered to their names when called.

Mr. POMERENE, Mr. SMITH of South Carolina, Mr. FRANCE, Mr. CALDER, Mr. SPENCER, Mr. FERNALD, Mr. HITCHCOCK, Mr. NEW, Mr. PITTMAN, Mr. FLETCHER, Mr. MCKELLAR, Mr. TOWNSEND, Mr. SMITH of Arizona, Mr. LENROOT, and Mr. CULBERSON entered the Chamber and answered to their names.

The VICE PRESIDENT. Fifty-nine Senators have answered to the roll call. There is a quorum present.

Mr. JOHNSON of California. Will the Senator from Utah yield to me for a moment?

Mr. SMOOT. I yield.

Mr. JOHNSON of California. Upon the bill which is pending before the Senate, namely, the bill (H. R. 5726) to fix the compensation of certain employees of the United States, I ask unanimous consent that a vote may be taken, say, to-morrow afternoon at 4 o'clock, or on Wednesday afternoon. I am not particular about the time; but I ask unanimous consent that a vote may be taken upon that bill at a time fixed, and I suggest to-morrow, Tuesday, at 4 p. m.

Mr. DIAL. Mr. President, I object.

MEAT-PACKING INDUSTRY.

Mr. SMOOT. I ask that Senate bill 3944, known as the packers' bill, be laid before the Senate.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 3944) to create a Federal live-stock commission, to define its powers and duties, and to stimulate the production, sale, and distribution of live stock and live-stock products, and for other purposes.

Mr. SMOOT. Mr. President, in the short time that I shall occupy the attention of the Senate on this bill I desire to point out as succinctly as possible the absolute facts in relation to the report made by the Federal Trade Commission and to answer in detail, if I can, some of the statements made in behalf of the bill.

Mr. President, on December 10 the distinguished Senator from Iowa [Mr. KENYON] delivered an elaborate address in support of Senate bill 3944, known as the Gronna bill, to create a Federal live-stock commission, and for other purposes.

As pointed out by him, numerous bills have been introduced during the past two years on the subject of packer regulation. The Federal Trade Commission has made a report of its ex parte investigation of the meat-packing industry, covering several volumes, likewise various committees in both branches of Congress have held exhaustive hearings on the subject.

It would be a monumental task for any Senator to undertake to analyze and discuss the report of the Federal Trade

Commission in detail or the testimony taken at the several hearings before congressional committees, and likewise the provisions of the many bills offered as a remedy for the evils alleged to exist.

I desire to pay tribute to the Senator from Iowa for his usual, thoroughgoing energy in presenting to the Senate such a comprehensive compilation of excerpts and figures from the great mass of official reports and statements of witnesses appearing before congressional committees. I dare say that he has presented the case in the strongest possible light from the viewpoint of the Federal Trade Commission and those advocating governmental control of the meat-packing industry.

I think it may be said that his summary presents the issue in sufficiently compact form, so as to save to all Members of Congress an enormous amount of labor in a study of that side of the case advocated by the proponents of this legislation. It is, perhaps, unfortunate that some Senator, with equal patience, has not found it agreeable or convenient to compile the figures, arguments, and statements on the other side of this question as they have been presented by those active in the management of this great industry, as well as by numerous producers of live stock, small packers, traders in the stockyards, and other persons connected directly or indirectly with the business.

Practically every conclusion and decision reached by the Federal Trade Commission has been categorically denied by the heads of the larger packing concerns. They have denied the existence of an illegal combination in restraint of trade or that they have established, either jointly or severally, a monopoly in the purchase of live stock or in the sale or distribution of the products. The Federal Trade Commission has offered no affirmative proof of the existence of any such agreements. No witness has appeared before any committee of Congress and testified to his knowledge of the existence of any illegal agreement or contract between the larger packers.

The Federal Trade Commission only undertakes to establish its contention by circumstantial evidence and by deduction from facts which the packers and many other witnesses have challenged and declared to be unwarranted. If the circumstances offered and relied upon as proof of an illegal monopoly are insufficient to establish the charges made in the face of positive denial of competent witnesses, or if they can be reasonably explained on any other hypothesis, then the whole fabric falls, and the excuse or justification for the proposed legislation can not be said to exist. Indeed, the distinguished Senator from Iowa has predicated his whole case upon this proposition. During the course of his speech he said:

> What I have to say is based on the hearings before our committee and also on the report of the Federal Trade Commission. If the report of the Federal Trade Commission is unworthy of belief, as has been charged on this floor, then what I have to say falls on the ground.

During the course of my remarks I hope to point out the principal circumstances upon which the Federal Trade Commission has relied in making its case and also the principal conclusions which they reached.

I think that I am entirely conservative and safe in making the following assertions:

1. A thorough study of the carefully selected exhibits and statements prepared by the distinguished Senator from Iowa will show that no legal evidence is contained therein to justify the charges made by the Federal Trade Commission or the conclusions which they set forth in their report, namely:

> That the power of the Big Five in the United States has been and is being unfairly and illegally used to "manipulate live-stock markets, restrict interstate and international supplies of foods, control the prices of dressed meats and other foods, defraud both the producers of foods and consumers, crush effective competition, secure special privileges from railroads, stockyards, and other municipalities, and profiteer."

2. The sentiment in support of the bill mainly arises from two conditions—(a) discontent on the part of some of the agricultural and live-stock interests with respect to the prices received by them for their produce, and (b) an organized propaganda financed by these interests for the purpose of endeavoring to secure a governmental agency which would assist them in procuring satisfactory prices.

3. The great bulk of the exhibits of figures and of the argument of the proponents of the bill arises out of the single proposition that the business done by each of the five larger packers is of extraordinary volume.

4. As regards the remaining portion of the exhibits and of the argument where items are indicated showing close association between the five larger packers or other alleged evils which should be remedied, a thorough understanding of the situation would indicate that the instances are relatively insignificant.

These statements and exhibits are ex parte, and it is obvious that they are assembled from isolated transactions, and that as regards them two observations can safely be made: (a) They are not representative and in all probability can be reasonably answered if the facts in each case could be examined; and (b) in so far as they may be taken as prima facie evidence, none of them are in any way such as to be capable of being considered by or within the jurisdiction of the proposed commission under the bill as it is now drawn.

5. There is a mass of legislation already existing which would afford ample remedy for any injured party in the event that the alleged evils presented have any merit.

The determination of each of the items presented involves not only enormous study on the part of any legislator who wishes to have a correct, impartial, and statesmanlike understanding of the situation, but requires a comprehensive knowledge of existing law and of the details and ramifications of an industry of enormous size and of infinite and complex detail.

As has been stated, the investigation of the Trade Commission was an ex parte proceeding, and was closed without permitting the packers interested a hearing on any of the charges or affording them an opportunity to explain any of the correspondence and other data taken from their files, which, unexplained, has led the commission to make many charges unsupported by the facts, and doubtless is responsible for the construction that has been placed upon the letters and other data at variance with their true purport and meaning. Therefore, it is not surprising that the packers have come forward and charged, and in many respects have shown in their testimony before committees, that the report abounds in inaccuracies, contradictions, and misconceptions.

It is not my purpose to enter into a criticism of the commission or to question the sincerity of its motives, but I shall undertake briefly to show that the commission has erred, through lack of full information, and has misjudged and misconstrued much of the material collected by it, and that its report is predicated upon too flimsy a foundation to justify the far-reaching and radical legislation proposed in the pending bill.

A large part of the report of the Federal Trade Commission is taken up by a statement of the early history of the packers while the industry was in a formative period, beginning with a report made in 1890—30 years ago—by a committee in the United States Senate. This is followed with a reference to the so-called "Veeder pool," and the formation by three of the large packers of the National Packing Co.

The report attempts to treat all of these matters of ancient history as if they were new discoveries, and attempts to invest them with a living significance, although they admit in their report that the so-called "Veeder pool" was terminated early in 1902—18 years ago—and that the National Packing Co. was dissolved in 1912.

On page 26 of the summary of their report they state: "There is apparently no dressed-meat pool at the present time such as existed in the nineties."

The National Packing Co. was voluntarily dissolved. Although its history was involved indirectly in legal proceedings, no court ever held that it in any manner violated any law of this country, and even since its dissolution many concerns in other industries have been consolidated into organizations along a line similar to that of the National Packing Co.

The commission in its report charges the five larger packers with maintaining a conspiracy in restraint of trade, and an illegal monopoly, but, as I have stated, they have offered no affirmative proof of its existence. No witness has testified that there exists an agreement or contract between the five packers to effect or accomplish any of the illegal purposes charged by the commission, nor has any witness testified to any facts from which an inference can be drawn that any such agreements actually existed.

A careful analysis of the facts and figures presented in the able address of the Senator from Iowa will show that circumstantial evidence alone is offered as a basis for these charges. The principal circumstances offered may be summed up as follows:

1. The alleged uniformity from year to year in the percentage of cattle, hogs, sheep, and calves purchased by each of the five packers during the last five years.

2. An alleged agreement to form an international meat pool to regulate and divide the shipments of meat from South America to the United States and certain foreign countries, particularly England.

3. Alleged agreements relating to other lines than the purchase of live stock and sale of meats, namely, cheese and lard compound.

4. The maintenance by the five packers of certain joint funds raised for the purpose of protecting the interests of the general industry in matters affecting their common interest.

The foregoing constitute the principal circumstances advanced by the commission in support of its contention.

If these four points can be reasonably and satisfactorily explained on any other hypothesis than that they are the result of an unlawful or illegal agreement, then it seems to me that the whole case as made by the commission falls to the ground. A table has been prepared by the commission showing what they claim to be relatively small variations in the percentages of live stock purchased by each of the five packers, covering a period of five years. It has been put forth as the foundation stone upon which the structure of monopoly is built, around which the principal arguments of the commission have been arrayed.

In fact, one of the commissioners stated that until they discovered this alleged fact they were about to give up in despair of finding any ground upon which they could predicate the conclusion that there was any illegal combination at the time of their investigation.

The importance of this alleged circumstance has been particularly emphasized by the Senator from Iowa. He treats it as the final and conclusive evidence from the force of which no one can escape.

I quote the following from his remarks:

When you consider only the variable flow of cattle, any control of the situation looks impossible. When you understand these centralized buying systems of each of the five packers, control looks entirely feasible. It is not only feasible, it is actually accomplished week after week, year after year. It was being accomplished during the period when the packers were on trial in 1910–1912; it was being accomplished while the House committee was considering the Borland resolution for an investigation, and telegrams were pouring in against it under packer inspiration; it was being accomplished week after week while the Federal Trade Commission made its investigation. I have no doubt it was being accomplished week after week during the time that the old Bureau of Corporations made the Garfield beef investigation of 1904, and I have no doubt it is being accomplished right now as we debate this bill. It has much to do with unrest and dissatisfaction among the farmers and stockmen.

THE PACKERS' "SHARE" OF THE PURCHASES.

What was being accomplished? Why this: That each of these five packers was getting, week after week, almost to a decimal point his predetermined "share" of this variable, unpredictable total flow of cattle to the principal markets of this country.

You ask for proof of this. It is depicted on the chart, page 50, volume 2, commission report, so that anyone can see, but proof is not necessary, because the representatives of the packers have practically admitted it before committees of this Congress.

I have a chart of that, which I will not take the time to go into, but if Senators will take the chart on page 70 of volume 2 of the commission's report they will be astounded to find that the percentages are maintained, with slight fluctuation, entirely through the year, and it is true of every other year, and those are the percentages that were established back in the old Veeder pool, where each packer was to take his proportion of the live stock that came to market.

They do not seriously controvert that proposition. They do not admit the word "predetermined." They say, "It is not predetermined." They say, "There is no agreement." They say, "It is keen, watchful competition." One of their counsel has likened it to the tremendous conflicting forces of gravity that keep the sun and the planets and the stellar universe unchanged in their eternal places.

I predict that these "shares" fixed by "watchful competition" will cease to be fixed within a few days after the enactment of this bill, and there will begin to show signs of really competitive bidding for the cattle produced by the farmers of our western country. And I venture to say that on the admitted showing of facts any fair jury would decide that these "shares" would not remain substantially unchanged year in and year out for 5, or perhaps for 10 or 20, years without an agreement. With all the masses of letters and documents from the packers' files that support these figures and point clearly to an agreement, there is no doubt of it.

It is impossible that this sameness is the result of coincidence. Until the chart can be explained the fact will stand out that it shows more than language can express the absolute combination.

If any Senator will study this chart can he stand up here and say that these five packers are not in a combination? He may argue that it is a good combination; that it makes for efficiency; that this is a bad bill; that it is unconstitutional; that, while he deplores the situation, there is no way under the Constitution to prevent the robbery of the people; that we have enough law on the subject now. He may say that the Federal Trade Commission is composed of Socialists and that the man who secured this information is a Socialist; that those who are trying to secure legislation are actuated by political and unpatriotic motives; that it is an outrage to do any disturbing of business; that the slogan should be to let business alone; that it is no time to regulate any kind of business; that sponsors for the bill want to see their names in the papers. He may say all that in rhetorical or loud voice, but he can not truthfully say that the packers are not in a combination.

The Senator from Iowa goes on to say:

It must be remembered that the figures of the chart to which I refer are the figures of the packers themselves, and from their own records. They were found already compiled each week on a separate card, bearing first the absolute number of each kind of animal bought by each packer, the percentage of each packer for the week, the percentage for the year, and the correspondent figure for the preceding year. These cards were initialed by some of the packers. They were the figures used by Swift & Co. in the daily conduct of its business. All the commission has done is to take these figures and transfer them to tabular form for summarization and to chart them on this chart.

Then Senators should follow it and take the first evidence found—and what turns out to be the key to the rest—a tattered memorandum discovered by one of the commission's agents in the desk of Edward F. Swift. The memorandum, which bore signs of frequent consultation, contained only certain percentages totaling 100, opposite which was scribbled "per cent live buyers." (House hearings, pt. 32, p. 2373.)

I insert this as follows:

			45,000
			45,000
			W. M. T.
	45,000		
A	29.26		
S	35.75		35.68
M	14.98	percentage live buyers.	44.69
S. & S	10.00		18.73
Cudahy	10.00		
	100.00		100.00

I will follow that a little further.

The method of operation was shown in a letter, in which was carried these percentages—and there will be found on page 66, part 1, of the commission's report—a letter from Mr. Veeder to W. B. Traynor, assistant to Louis F. Swift, referring to these percentages that they had for legislative and litigation matters, and those identical percentages are carried into the purchases and to the sales. I insert their letter and also two pages of the House hearings showing that fact (pp. 2369, 2370, 2372).

AUGUST 23, 1916.

Mr. W. B. TRAYNOR,
Care Swift & Co., Chicago.

DEAR SIR: You asked me the other day for certain percentages which are generally known as the "usual percentages." On July 30, 1913, L. F. S., A. M., and T. E. W. agreed with C. and S. & S. upon the following percentages to cover general legislative and litigation matters:

S	35.751	39.723	44.689
A	29.266	32.518	36.582
M	14.983	16.648	18.729
C	10	11.111	
S. & S	10		
	100.000	100.000	100.000

Of course, C and S were arbitrary. The A, F, and H figures are the so-called old beef figures, which were based upon the volume of beef business in 1902.

Sincerely, yours.

The Senator then presents a table compiled by the Federal Trade Commission from the data taken from the files of Swift & Co., and undertakes to apply the percentages set forth in the letter to Traynor in an effort to show that the purchases of live stock of all kinds, including cattle, sheep, and hogs, were predicated upon the percentage set forth in the memorandum of Edward F. Swift and in the Traynor letter.

Inasmuch as I desire to discuss and analyze the compilation used by the Federal Trade Commission and the Senator from Iowa, I set it forth at this point in full—I am not going to take the time to read it, but I ask that it may go into the RECORD without reading it—and my following remarks will explain it.

Mr. KENYON. Mr. President, what is it that the Senator is now inserting?

Mr. SMOOT. The table that I am now inserting is Table 1, "Percentages of live-stock purchases—cattle, sheep, and hogs combined—by each of the Big Five."

Mr. KENYON. The same table that I inserted in my remarks?

Mr. SMOOT. Exactly the same table that the Senator inserted, and now I am going to explain it.

There being no objection, the table referred to was ordered to be printed in the RECORD, as follows:

TABLE 1.—*Percentages of live-stock purchases—cattle, sheep, and hogs combined—by each of Big Five, of total purchased by Big Five, 1913–1917, compared with "Usual percentages based on old beef figures of 1902."*

[Compiled from table on p. 57, part 2, Report on meat-packing industry, "Usual percentages," from letter by Henry Veeder, on p. 66 of part 1 of same report.]

	Total Big Five.	Swift.	Armour.	Morris.	Wilson.	Cudahy.	Wilson and Cudahy combined.	Range of variations from "Usual percentage."
1913.								
Head purchased, cattle	5,082,619	1,723,008	1,381,456	904,706	596,699	476,750		
Head purchased, sheep	10,174,937	4,018,083	2,915,120	1,317,654	975,776	948,304		
Head purchased, hogs	16,273,917	5,954,626	5,168,596	2,144,902	1,256,347	1,749,446		
Head purchased, total	31,531,473	11,695,717	9,465,172	4,367,262	2,828,822	3,174,500		
Per cent of all animals	100.000	37.092	30.018	13.851	8.971	10.068	19.039	
"Usual percentages"	100.000	35.751	29.266	14.983	10.000	10.000	20.000	
Variation from "usual"		+1.341	+.752	−1.132			−.961	0.752–1.341

TABLE 1.—*Percentages of live-stock purchases—cattle, sheep, and hogs combined—by each of Big Five, of total purchased by Big Five, 1913–1917, etc.*—Continued.

	Total Big Five.	Swift.	Armour.	Morris.	Wilson.	Cudahy.	Wilson and Cudahy combined.	Range of variations from "Usual percentage."
1914.								
Head purchased, cattle	4,841,689	1,646,659	1,315,003	870,051	559,699	450,277		
Head purchased, sheep	10,085,936	3,927,463	2,803,890	1,256,708	1,035,826	1,062,049		
Head purchased, hogs	14,564,933	5,332,222	4,624,366	1,915,289	1,160,825	1,532,231		
Head purchased, total	29,492,558	10,906,344	8,743,259	4,042,048	2,756,350	3,044,557		
Per cent of all animals	100.000	36.980	29.646	13.705	9.346	10.323	19.669	
"Usual percentages"	100.000	35.751	29.266	14.983	10.000	10.000	20.000	
Variation from "usual"		+1.229	+.380	−1.278			−.331	0.331–1.278
1915.								
Head purchased, cattle	5,279,407	1,819,812	1,455,532	957,684	535,860	510,519		
Head purchased, sheep	8,778,591	3,410,483	2,469,418	1,106,102	905,950	886,638		
Head purchased, hogs	17,316,443	6,297,990	5,444,290	2,277,112	1,522,115	1,774,936		
Total	31,374,441	11,528,285	9,369,240	4,340,898	2,963,925	3,172,093		
Per cent of all animals	100.000	36.744	29.863	13.836	9.447	10.110	19.557	
"Usual percentages"	100.000	35.751	29.266	14.983	10.000	10.000	20.000	
Variation from "usual"		+.993	+.597	−1.147			−.443	.443–1.147
1916.								
Head purchased, cattle	6,097,183	2,109,016	1,648,678	1,088,957	667,032	583,500		
Head purchased, sheep	8,969,462	3,491,811	2,496,201	1,105,038	906,813	969,599		
Head purchased, hogs	20,350,372	7,334,274	6,424,612	2,712,705	1,717,571	2,161,210		
Total	35,417,017	12,935,101	10,569,491	4,906,700	3,291,416	3,714,309		
Per cent of all animals	100.000	36.522	29.843	13.854	9.293	10.488	19.781	
"Unusual percentages"	100.000	35.751	29.266	14.983	10.000	10.000	20.000	
Variation from "usual"		+.771	+.577	1.129			−.219	.219–1.129
1917.								
Head purchased, cattle	7,629,569	2,675,690	2,056,932	1,307,708	827,808	761,431		
Head purchased, sheep	7,059,268	2,798,294	1,853,058	870,408	751,812	785,696		
Head purchased, hogs	16,343,612	5,885,335	5,037,101	2,152,454	1,464,387	1,804,335		
Total	31,032,449	11,359,319	8,947,091	4,330,570	3,044,007	3,351,462		
Per cent of all animals	100.000	36.605	28.831	13.955	9.809	10.800	20.609	
"Usual percentages"	100.000	35.751	29.266	14.983	10.000	10.000	20.000	
Variation from "usual"		+.854	−.435	−1.028			+.609	.435–1.025

It is to be observed that in no year did any company vary from the "usual percentages" by more than one and thirty-four one-hundredths of 1 per cent (Swift & Co., 1.341 per cent in 1913).

Mr. SMOOT. Following the presentation of this compilation, the Senator from Iowa says:

And so, building up from 1902 and before the old Veeder pool, where they had the absolute percentages of live stock, carrying that on into the purchases and sales now, not only in this country but of all of their sales, is evidence that no man, if he is not so prejudiced that he will not so consider it, can take up and come to any other conclusion than that there is in this combination in the market place of the man who is compelled to sell his live stock there.

Notice now how these are carried out.

These "usual percentages" are carried into the live-stock purchases—identical with the percentages that were agreed upon July 30, 1913.

This table in the House hearings is compiled from the table on page 57, part 2, commission's investigation. Not only are these usual percentages carried into the purchase of live stock, but they are carried into the total sales, domestic and foreign, and side lines. The table in House hearings, part 32, page 2372, shows this. So we have testimony as clear as circumstances can make it of the adoption of percentages in all matters between these controlling interests, which percentages are carried into purchases and into sales.

Coupled with this and making it even more conclusive is the exhibit on page 2372, part 32, of the same House hearings.

A casual reading of these tables and so-called "key" would seem to bear out the contention of the Federal Trade Commission and the distinguished Senator from Iowa, but I have had occasion to analyze and study this evidence and the testimony of witnesses explaining same, and I am free to say that I do not obtain the same results and can not reach the same conclusion suggested by the Federal Trade Commission and by the distinguished Senator from Iowa.

It is quite apparent from the text of the letter addressed to Mr. W. B. Traynor that the purpose for which the percentages set forth there were to be used was not to fix the percentage of cattle, sheep, and hogs each packer was supposed to buy, but was a basis for the assessment of a general fund to be used in general litigation matters. In explaining that letter and the percentages used, Mr. Henry Veeder testified before the House Committee on Agriculture, part 14, page 1028, and stated among other things that the figures used in the Traynor letter were used as a basis for apportioning the expense of certain litigation in which all five of the packers had a common interest and were not used in the packing business in any other way or for any other purpose. These figures were used occasionally in connection with matters in litigation which had to do with the entire industry or the entire country. For example, in a case where the constitutionality of some tax law on oleomargarine was to be tested, or in a case where a common fund was to be raised for the welfare of employees. In such cases as these a joint fund was subscribed and apportioned on the basis of the figures used in the Traynor letter.

The packers contend that these figures had no bearing or relation to the actual number of head of live stock purchased in the markets of the country as charged by the Federal Trade Commission, and my analysis of the figures and charges to a large extent bears out this contention of the packers. I will refer to that phase of this question more fully hereafter.

Mr. KENYON. Mr. President, of course I do not want to interfere with the Senator's set speech, but he says the Traynor letter referred only to litigation matters. It very expressly refers to general legislative and litigation matters. They do not vary those percentages even in the contributions to elect Members of Congress.

Mr. SMOOT. If the Senator will just wait, I will show how these percentages figure out.

Mr. KENYON. I will show how these percentages went into the contributions to elect Members of Congress.

Mr. SMOOT. The Senator can say that, but there is no testimony showing it.

Mr. KENYON. There is testimony to that effect.

Mr. SMOOT. I have read nearly every word of the testimony and I have not found it.

Mr. KENYON. I have read every word of it.

Mr. SMOOT. The Federal Trade Commission, from the manner in which it sets forth the finding of statistics in the archives of the packers relating to their purchases in the markets, attempts to clothe that fact with mystery and attach an unusual significance to the fact that one of the packers should have such data in his files. During the course of the hearings the packers have explained that the daily receipts of live stock at all the markets of the country and prices paid therefor are published broadcast in the newspapers throughout the country. They are also compiled by the Agricultural Department of the Government and many other agencies. They have shown that the papers and journals devoted to live-stock industry publish daily the receipts and the sales, as well as the names of purchasers and the quantity taken on all the markets and prices paid, and in the end certain journals compile a "yearbook of figures" showing, among other things, the receipts at all the markets of the world and prices paid each week of the year, also the number of live stock slaughtered by each of the packers. In fact, all of the facts and figures covering every point of in-

formation connected with the live-stock industry are made public and are available to every citizen of this country. There can be no secret or mystery about it, and the fact that the packers avail themselves of this information and keep track in their own records of their own transactions, as well as those of their competitors, can not be said to be evidence of sinister motives or dark designs, but it would appear to be a natural and essential matter vital to the success of a well-managed enterprise, a thing that the Federal Trade Commission knows absolutely nothing about.

There is no evidence in the entire records showing secret meetings of the packers or that such data is kept solely by the larger packers. From the fact that all the data essential to compile a table such as was found in the Swift files can easily be procured from so many sources, I venture the assertion that in the records kept by every successful packer, large or small, in the office of every buyer or speculator, every commission merchant, and, in fact, everyone trading or having to do with business on any or all of the markets of the country, similar data and information can be found. The small packer knows as fully what each of the large packers buy and the prices paid as the large packers do themselves, for all this information is a matter of public knowledge and is daily available to any interested person through numerous sources. The large packers or the small could not keep their activities in the market secret if they chose.

The Federal Trade Commission in the summary of its report, page 51, said:

So far we have been merely describing the character and methods of the conspiracy among the Big Five. We now offer some of the illuminating proofs, leaving the examination of the voluminous details regarding the workings of the conspiracy for the full report.

The first evidence which came into our possession indicating the existence of a live-stock pool was in the form of a tattered memorandum discovered by one of the commission's agents in the files of Edward F. Swift. This memorandum, which bore signs of frequent consultation, contained only certain percentages, totaling 100, opposite which was scribbled "per cent live buyers." This document might not have attracted so much attention if in the same files had not been discovered a set of sheets showing the number and percentages of live stock purchased by each of the Big Five at the principal markets and in the entire country. The first glance at these sheets revealed such a remarkable uniformity from year to year in the percentages purchased by each of the big packers as to convince any disinterested person that such results could be attained only by agreement. Here, for example, are the percentages of cattle purchased by each of the Big Five during the last five years:

Per cent of total cattle purchases.

	Swift.	Armour.	Morris.	Wilson (Sulzberger).	Cudahy.
1913	33.90	27.18	17.80	11.74	9.38
1914	34.01	27.16	17.97	11.56	9.30
1915	34.47	27.57	18.14	10.15	9.67
1916	34.59	27.04	17.86	10.94	9.57
1917	35.07	26.96	17.14	10.85	9.98

The percentages for hogs, sheep, and calves displayed the same uniformity and, even more significant, the figures for the separate markets were consistently maintained.

Now, let us examine this statement in the light of the tables of percentages set forth above. It will be observed that the so-called "tattered memorandum" obtained from the desk of Edward F. Swift, which, as has been explained, was a table prepared for the apportionment of expense and not for the purchase of cattle, does not correspond with the percentages set forth in the Federal Trade Commission's report. For example, in the Traynor letter and the "tattered memorandum" the percentage there indicated for Swift is 35.75. Now refer to the percentage of cattle purchased by Swift in any of the years from 1913 to 1917. In no year did they approximate the percentage shown in the Traynor letter and the Swift "tattered memorandum." In 1913 they purchased 33.90 per cent of cattle. In that year they lack 1.85 per cent of securing the percentage indicated in the memorandum. That would seem to be a very small item, and close enough to satisfy any agreement or conspiracy to divide the purchasers of live stock on the markets of the country, but when you consider the enormous volume of cattle purchased by the five larger packers this apparently insignificant difference in the percentage would amount to an enormous number.

By referring to the table compiled by the Federal Trade Commission and used by the Senator from Iowa in his speech as illustrative of how this percentage operated, it will be seen that in 1913 the total number of cattle purchased by the five larger packers was 5,082,619. Swift actually bought 1,723,008 head of cattle, which corresponds to the 33.90 per cent shown in the table of the Federal Trade Commission's report, page 52. When you take the percentage that he was entitled to buy, namely, 35.75, as set forth in the "tattered memorandum" and the Traynor letter, you will find that Swift lacked 94,078 head of cattle purchasing the percentage which he was entitled to. This small, insignificant fraction of 1.85 per cent amounts to that number of head of cattle.

Likewise it will be seen, from the "tattered memorandum" and the Traynor letter, that Armour's percentage of purchases was 29.26. In the year 1913, according to the Federal Trade Commission's table, he only purchased 27.18 per cent. Armour lacked 2.08 per cent purchasing what he was entitled to purchase under the supposed agreement. This meant that Armour lacked 106,024 head of cattle of purchasing his quota.

According to the "tattered memorandum" and the Traynor letter, Morris's percentage was 14.98. According to the table of the Federal Trade Commission, Morris purchased, in 1913, 17.80 per cent of the total purchases of cattle made by the five larger packers. Consequently he purchased 2.82 per cent more than he was entitled to under the conspiracy agreement alleged by the Federal Trade Commission, which meant that Morris bought 143,177 head more than he was entitled to purchase.

According to the "tattered memorandum" and the Traynor letter, the percentage of Sulzberger or Wilson & Co. in 1913 was 10 per cent. According to the table of purchases compiled by the Federal Trade Commission, in the year 1913 Sulzberger purchased 11.74 per cent, amounting to 1.74 per cent more than he was entitled to under the alleged agreement, which, reduced to number of head, meant that Sulzberger purchased 88,437 more cattle in 1913 that he was entitled to under the agreement.

According to the "tattered memorandum" and the Traynor letter, Cudahy was entitled to a division of 10 per cent of cattle purchased. According to the Federal Trade Commission's table, he only purchased 9.38 per cent, which was 0.62 per cent less than he was entitled to under the alleged agreement, which meant, although it was but a fraction of 1 per cent, that Cudahy failed to purchase 31,512 cattle that he was entitled to under the agreement.

So it will be seen that for the year 1913 Swift, Armour, and Cudahy did not carry out the agreement and divide their purchases of cattle, as was alleged, on any such basis, neither did Morris and Wilson appear to observe any such arrangement, for the figures show that the total number purchased far exceeded their quota.

Judging from the average price of cattle for the year 1913, each of these transactions amounted to millions of dollars. This will serve to illustrate the point, and it will be seen by these charts that in no year from 1913 to 1917 do the figures set forth in the "tattered memorandum" and in the Traynor letter correspond with the tables of purchases set forth in the Federal Trade Commission's report.

The Federal Trade Commission states that "the percentage for hogs, sheep, and calves displayed the same uniformity, and, even more significant, the figures for the separate markets also were consistently maintained."

Mr. GRONNA. Mr. President, I do not wish to interrupt the Senator at all, but I think it is important that the table to which he has referred, which is found on page 27 of the summary of the report of the Federal Trade Commission, should be read in full and the uniformity explained.

Mr. SMOOT. Mr. President, I will explain the uniformity of the table. In cases where there is nearly a million difference in the number of head of cattle and hogs it can not be said to be uniform. If the Senator will be patient, I will reach every point, and the table will go in with my remarks, as I have asked unanimous consent that it may go in.

Mr. GRONNA. I am glad to know that the table is to go in the RECORD.

Mr. KENYON. I ask the Senator if he intends to refer to the other years—1914, 1915, and so on.

Mr. SMOOT. I will refer to all the years.

Mr. KENYON. I am glad to know that.

Mr. SMOOT. I will say to the Senator, in passing, that they are all about the same; there are as many discrepancies in all the years as in the year 1913.

I have carefully studied the tables presented by the Senator from Iowa covering the total purchases of cattle, sheep, and hogs by the five larger packers, and the effort made by the Federal Trade Commission to show that the figures in the "tattered memorandum" and the Traynor letter were the real basis of such purchases by each of the larger packers.

It must be borne in mind that all of the packers have denied that they use any such basis to govern their purchases either of cattle, sheep, or hogs. They have denied that there is any

agreement of any kind to divide purchases on that or any other basis. They have also stated that the amount of their purchases is governed almost wholly by the outlet which they have for the products handled, and this is somewhat borne out by a table found in the House hearings, part 1, page 32, showing the number of branch houses operated by the five larger packers throughout the United States. The number of such branch houses is as follows:

Swift & Co	361
Armour & Co	260
Morris & Co	148
Wilson & Co	130
Cudahy Packing Co	101

It is natural that a concern operating 361 branch houses would be able to supply more customers and would therefore require a larger number of head of live stock to fill this demand than would a concern operating only 101 branch houses, and a careful study of this point would furnish a more reasonable explanation of the relative percentages of the total volume than the assumption that there must be an agreement in order to approximate the volume handled by each of these concerns, and it is a significant fact, shown by these figures, that the quantity of live stock really purchased by each of the larger packers, comes nearer conforming to the number of branch houses each operates, in the matter of relative percentage, than is shown by the results obtained from the figures used in the "tattered memorandum" and the Traynor letter.

Now, reverting to the table compiled by the Federal Trade Commission showing the number of cattle, sheep, and hogs purchased by each of the large packers for five years, according to my calculations, the statement of the Federal Trade Commission that there was the same uniformity in the purchase of hogs, sheep, and calves, is not borne out by an analysis of these figures. For instance, in 1913, according to the percentage used in the "tattered memorandum," Swift should have purchased 3,637,648 sheep. The table shows that he actually purchased 4,018,083. In other words, he purchased 380,435 more sheep than he was entitled to under the percentage therein set forth.

Armour was entitled to buy 2,977,798 sheep, but according to the table he actually bought 2,915,120 head, so he fell short 62,678 head that year.

According to the percentage ascribed to Morris & Co., they should have purchased 1,524,505 head. The table shows that they actually purchased 1,317,654. They were short of their quota 206,851 head.

Wilson & Co., according to their 10 per cent, should have purchased 1,017,493. The table shows that they actually purchased 975,776. They were short of their quota 41,717.

According to the percentage allotted Cudahy should have purchased 1,017,493 head, but the table shows that he actually purchased 948,304 head, being short 69,189 head, so that we see from the table compiled by the Federal Trade Commission that the percentages found in the "tattered memorandum" and the Traynor letter do not work out in practice, at least, and are not uniform in governing the number of sheep, cattle, or hogs purchased by the five large packers, for during the year 1913 it is shown that Swift was the only one who purchased the number of sheep allotted under the alleged agreement, but that he purchased nearly 400,000 head more than he was entitled to, if there was any such agreement, while the other four packers were short in their quota for that year, ranging from 41,000 head to over 200,000 head.

Now, let us examine the same year in reference to hogs. According to the percentage found in the "tattered memorandum" and the Traynor letter, which the packers say was only used as a basis to apportion an expense fund and not to apportion the receipts of live stock, Swift & Co. was entitled to buy 5,818,092 hogs. According to the table they actually purchased 5,954,626 head of hogs, being 136,534 head more than they were entitled to purchase under the alleged conspiracy.

Armour was entitled to buy, according to his percentage, 4,762,720 head. He actually bought, according to the table, 5,168,596 head, being 405,876 more head than he was entitled to purchase.

Morris & Co. was entitled to buy 2,438,321 head. They actually bought 2,144,902 head. For some unaccountable reason Morris & Co. were minus 293,419 head of their quota.

Wilson & Co. were entitled to buy 1,627,392 head. They actually purchased 1,256,347 head. They were short 371,045 head.

Cudahy, who was entitled to purchase 1,627,392 head, actually purchased 1,749,446 head, an excess of 122,054 head of hogs.

Each of these totals, whether surplus or minus, amount in dollars to millions of dollars, and it is unreasonable to suppose that if there was any such agreement or conspiracy, as charged by the Federal Trade Commission, upon these alleged circumstances alone, that it was at least not carried out, for these figures show such a larger variance in the number of head actually purchased and the percentages allotted as to refute the charges made. These facts are not only true for the year 1913, but they are true of each of the years 1914, 1915, 1916, and 1917, as set forth in the chart of the Federal Trade Commission; and in order that the Senators may see for themselves to what extent these figures vary and the enormous quantity of live stock involved in each variance, I have prepared an analysis for each year showing the total number of cattle, sheep, and hogs purchased by each of the five packers and the quantity in excess and the quantity minus their respective quotas in each case. I ask that they be inserted in the RECORD without reading.

The PRESIDING OFFICER (Mr. WILLIS in the chair). Without objection, permission is granted.

The tables referred to are as follows:

Statistics from Congresisonal Record.

[Actual number purchased greater (+); usual percentage greater (—).]

	Total Big Five.	Swift.	Armour.	Morris.	Wilson.	Cudahy.
1913.						
Cattle:						
Actual number purchased	5,082,619	1,723,008	1,381,456	904,706	596,699	476,750
"Usual percentage"		1,817,086	1,487,480	761,529	508,262	508,262
Difference		— 94,078	—106,024	+143,177	+ 88,437	— 31,512
Sheep:						
Actual number purchased	10,174,937	4,018,083	2,915,120	1,317,654	975,776	948,304
"Usual percentage"		3,637,648	2,977,798	1,521,505	1,017,493	1,017,493
Difference		+380,435	— 62,678	—206,851	— 41,717	— 69,189
Hogs.						
Actual number purchased	16,273,917	5,954,626	5,168,596	2,144,902	1,256,347	1,749,446
"Usual percentage"		5,818,092	4,762,720	2,438,321	1,627,392	1,627,392
Difference		+136,534	+405,876	—293,419	—371,045	+122,054
1914.						
Cattle:						
Actual number purchased	4,841,689	1,646,659	1,315,003	870,051	559,699	450,277
"Usual percentage"		1,730,954	1,416,969	725,430	484,168	484,168
Difference		—84,295	—101,966	+144,621	+75,531	—33,891
Sheep:						
Actual number purchased	10,085,935	3,927,463	2,803,890	1,256,708	1,035,826	1,062,043
"Usual percentage"		3,605,823	2,951,751	1,511,176	1,008,593	1,008,593
Difference		+321,640	—147,861	—254,468	+27,233	+53,453
Hogs:						
Actual number purchased	14,564,933	5,332,222	4,624,366	1,915,289	1,160,825	1,532,231
"Usual percentage"		5,207,108	4,262,575	2,182,264	1,456,493	1,456,493
Difference		+125,114	+361,791	—266,975	—295,668	+75,738

Statistics from Congressional Record—Continued.

	Total Big Five.	Swift.	Armour.	Morris.	Wilson.	Cudahy.
1915.						
Cattle:						
Actual number purchased	5,279,407	1,819,812	1,455,532	957,684	535,800	510,519
"Usual percentage"		1,887,438	1,545,075	791,012	527,941	527,941
Difference		−67,626	−89,543	+166,672	+7,919	−17,422
Sheep:						
Actual number purchased	8,778,591	3,410,483	2,469,418	1,106,102	905,950	886,638
"Usual percentage"		3,138,434	2,569,143	1,315,296	877,859	877,859
Difference		+272,049	−99,725	−209,194	+28,091	+8,779
Hogs:						
Actual number purchased	17,316,443	6,297,990	5,444,290	2,277,112	1,522,115	1,774,936
"Usual percentage"		6,190,804	5,067,829	2,594,522	1,731,644	1,731,644
Difference		+107,186	+376,461	−317,410	−209,529	+43,292
1916.						
Cattle:						
Actual number purchased	6,097,183	2,109,016	1,648,678	1,088,957	667,032	583,500
"Usual percentage"		2,179,804	1,784,400	913,543	609,718	609,718
Difference		−70,788	−135,722	+175,414	+57,314	−26,218
Sheep:						
Actual number purchased	8,969,462	3,491,811	2,495,291	1,105,038	906,813	969,509
"Usual percentage"		3,206,674	2,625,002	1,343,894	896,945	896,945
Difference		+285,137	−128,801	−238,856	+9,867	+72,653
Hogs:						
Actual number purchased	20,350,372	7,334,274	6,424,612	2,712,705	1,717,571	2,161,210
"Usual percentage"		7,275,458	5,955,740	3,049,100	2,035,037	2,035,037
Difference		+58,816	+468,872	−336,395	−317,466	+126,173
1917.						
Cattle:						
Actual number purchased	7,629,569	2,675,690	2,056,932	1,307,708	827,808	761,431
"Usual percentage"		2,727,648	2,232,870	1,143,137	762,957	762,957
Difference		−51,958	−175,938	+164,571	+64,851	−1,526
Sheep:						
Actual number purchased	7,059,268	2,798,294	1,853,058	870,408	751,812	785,693
"Usual percentage"		2,523,760	2,065,964	1,057,690	705,927	705,927
Difference		+274,534	−212,906	−187,282	+45,885	+79,769
Hogs:						
Actual number purchased	16,343,612	5,885,335	5,037,101	2,152,454	1,464,387	1,804,335
"Usual percentage"		5,843,010	4,783,119	2,448,761	1,634,361	1,634,361
Difference		+42,325	+253,982	−296,307	−169,974	+169,974

Mr. TOWNSEND. May I ask the Senator a question?

Mr. SMOOT. Certainly.

Mr. TOWNSEND. Do the records disclose what were the percentages of purchases prior to 1913 by these different concerns?

Mr. SMOOT. Not that I am aware of, but I will say to the Senator that he can go to the Department of Agriculture and find that data for any time he may desire, and any other citizen of the United States can do likewise. The information is open to all the world. There is not a packer, large or small, who can not see the figures at any time he wishes, and he may receive them daily if he so desires.

Mr. TOWNSEND. It occurred to me that if the commission or any other investigating body should claim that the arrangement was made for the future and was adhered to, it might have been well to have found out what was the proportion of purchases prior to 1914.

Mr. SMOOT. I will say to the Senator that I have not got them.

Senators will notice that the variations in the percentages of each of the five packers amount to 5 or 10 per cent of their own annual business and the percentage on their annual business should have been given to show the variation instead of the total of business done by the five packers. For instance, the Federal Trade Commission reports Swift & Co.'s variation to be 1.85 per cent, but the variation in their own business is 5 per cent, and with Cudahy & Co. the commission reports 1 per cent and it should be 10 per cent. Where in the bill is the power to change these percentages, and who will decide what they should be and how is it to be effected? The bill does not deal with the issues the Federal Trade Commission says are the result of combinations.

Now let us examine carefully this evidence which the Federal Trade Commission and the Senator from Iowa has accepted as conclusive proof of a conspiracy in violation of law.

I have pointed out the public nature of all transactions in the public market places. I have shown how all data in relation to the purchase of live stock are compiled by the Government, newspapers, live-stock journals, and by others, and that the fact that the packers compile such data for their own information is a common practice and in keeping with American business traditions. Even the Federal Trade Commission did not seem to attach any particular significance to that fact until they found the so-called "tattered memorandum" in the desk of Edward Smith and the letter to Traynor in the files of Henry Veeder.

It will be observed that the figures on the "tattered memorandum" are identical with the figures of the Traynor letter, and do not correspond with the percentages of purchases shown on the table of percentages of cattle purchases in the report of the Federal Trade Commission heretofore set out. The Traynor letter and the testimony of Veeder shows those figures were intended to be used in prorating certain joint expenses. But the Federal Trade Commission says that inasmuch as those figures were formerly used by the Veeder pool in dividing shipments of dressed beef to eastern cities, they were illegal and the presence of those figures in the "tattered memorandum" and the Traynor letter are circumstances to show that the same percentages were now being used to form a live-stock pool and to divide the receipts of live stock bought by the five larger packers.

Now let us examine this view a little closer. In the first place, the United States circuit court in the Grosscup injunction of 1902 expressly held that nothing in the injunction "shall be construed to prohibit the defendants from curtailing the quantity of meats shipped to a given market where the purpose of such arrangement in good faith is to prevent the overaccumulation of meats as perishable articles in such markets." This language was approved by the Supreme Court of the United States in the case of United States against Swift & Co. et al.

The object of the Veeder pool was to restrict shipments of dressed beef so as to prevent gluts and waste in the consuming centers of the East, something which the highest courts say is permissible, and a practice carried on to-day by numerous asso-

ciations handling other perishable products in this country. So we see that the reference in the Traynor letter that the figures used were the "so-called old beef figures which were based upon the volume of beef business in 1902" do not justify the sinister significance cast upon them by the Federal Trade Commission. Moreover, I have pointed out that they are not a key to the percentages of purchases of live stock as charged by the Federal Trade Commission. They do not fit anyways measurably close to the quantity of cattle, sheep, or hogs bought in either of the five years by either of the five larger packers, by numbers ranging from tens of thousands into hundreds of thousands of head representing values running into tens of millions of dollars. Circumstantial evidence of crime should be more accurate than these figures to be accepted as irrefragable proof of illegal contracts and agreements, especially where the charges are denied by positive statements of scores of witnesses.

In order to lend corroborative proof to the circumstance charged that the packers were dividing the receipts of live stock according to a predetermined percentage, the commission has taken the financial reports of the various packers for the years 1912 to 1916, inclusive, and has compiled a table in which they undertake to show that the percentages found in the "tattered memorandum" and the Traynor letter apply with equal force to the total volume of sales each year of the five large packers. This table was used by the Senator from Iowa in the course of his address and is pointed to as a further circumstance which he characterizes as testimony "as clear as circumstances can make it of the adoption of percentages in all matters between these controlling interests, which percentages are carried into purchases and into sales."

For the purpose of discussing this charge, I set forth at this point the table which he used in his address:

TABLE 2.—*Percentages of total sales—domestic and foreign, all commodities, including side lines—by each of the Big Five, of total sales by all of the Big Five, 1912–1916, compared with "usual percentages based on old beef figures of 1902."*

[Total sales as furnished by the companies; "usual percentages" from letter by Henry Veeder, on p. 66 of pt. 1 of the Report on the Meat Industry.]

	Total Big Five.	Swift.	Armour.	Morris.	Wilson.	Cudahy.	Wilson and Cudahy combined.	Range of variations from "usual percentages."
1912.								
Sales	$892,401,961	$300,000,000	$263,307,000	$134,430,000	$101,220,961	$90,444,000	$191,664,961	
Per cent	100.000	33.617	29.505	15.064	11.679	10.135	21.814	
"Usual percentages"	100.000	35.751	29.266	14.983	10.000	10.000	20.000	
Variation from "usual"		−2.134	+.239	+.081			+1.814	0.081-2.134
1913.								
Sales	$1,143,073,036	$400,000,000	$349,897,000	$165,909,000	$122,861,036	$104,409,000	$227,270,036	
Per cent	100.000	34.993	30.610	14.514	10.749	9.134	19.883	
"Usual percentages"	100.000	35.751	29.263	14.983	10.000	10.000	20.000	
Variation from "usual"		−.758	+1.344	−.469			−.117	.117-1.344
1914.								
Sales	$1,200,775,883	$425,000,000	$354,801,000	$158,983,000	$152,870,883	$109,121,000	$231,991,883	
Per cent	100.000	35.394	29.548	13.240	12.731	9.087	21.818	
"Usual percentages"	100.000	35.751	29.266	14.983	10.000	10.000	20.000	
Variation from "usual"		−.357	+.282	−1.743			+1.818	.282-1.818
1915.								
Sales	$1,295,614,464	$500,000,000	$380,157,000	$177,040,000	$122,255,434	$113,162,000	$230,417,434	
Per cent	100.000	38.592	29.342	13.664	9.436	8.933	18.402	
"Usual percentages"	100.000	35.751	29.263	14.963	10.000	10.000	20.000	
Variation from "usual"		+2.841	+.075	−1.319			−1.598	.075-2.841
1916.								
Sales	$1,595,709,000	$575,000,000	$479,969,000	$213,781,000	$183,998,000	$133,961,000	$320,959,000	
Per cent	100.000	36.034	30.079	13.773	11.719	8.395	20.114	
"Usual percentages"	100.000	35.751	29.263	14.983	10.000	10.000	20.000	
Variation from "usual"		+.283	+.813	−1.210			+.114	.114-1.210

It is to be observed that in no year did any company vary from the "usual percentages" by more than two and eighty-four one-hundredths of 1 per cent (Swift & Co., 2.841 per cent in 1915).

Now, let us apply the supposed percentages found in the "tattered memorandum" and the Traynor letter to this table and see what results we obtain. At the bottom of the table a footnote states: "It is to be observed that in no year did any company vary from the 'usual percentages' by more than 2.84 of 1 per cent (Swift & Co., 2.841 per cent in 1915)." That figure would seem to be a small variation from the "usual percentage."

I will omit any reference to the year 1912 inasmuch as the statistics compiled in relation to the purchase of live stock begins with the year 1913, according to the charts compiled by the Federal Trade Commission as used in my previous argument. Taking the year commencing with 1913 the chart shows that the total volume of business of the five large packers was $1,143,076,036. Applying the usual percentage found in the "tattered memorandum" and the Traynor letter, Swift's proportion should have been $408,661,129. His actual sales according to the chart was $400,000,000, so that we find he fell short $8,661,129.

Armour's usual percentage should have netted $334,532,622, yet we find from the chart that he actually sold $349,897,000, so that he received $15,364,378 more than his quota of sales.

Morris's usual percentage should have produced $171,267,077 in sales. The chart shows that he was only able to approximate the conspiracy by a sale of $165,909,000, so he was minus $5,358,077.

Wilson's quota was $114,307,604, but he actually outwitted his fellow conspirators by selling $122,861,036, an excess of $8,553,432.

Cudahy was entitled to $114,307,604 of sales, but he was only able to account for $104,409,000, suffering a loss to some of his fellow conspirators of $9,898,604.

So it will be seen that the usual percentage does not work qut as a key to a predetermined division of sales by many millions of dollars in the case of each of the five large packers. The same results are true in the figures for 1914, 1915, and 1916, and in order that the Senators may see the actual results for each of these years, I insert at this point the analysis which I have made, which will give at a glance the result for each of the years set out in the table compiled by the Federal Trade Commission, and used by the Senator from Iowa as a corroborative circumstance to show that this alleged key is the basis for the division of the purchases of live stock and for the sale of all their products in the markets of the world.

I ask, Mr. President, that the analysis to which I have referred may be inserted in the RECORD without reading.

The PRESIDING OFFICER (Mr. KELLOGG in the chair). Without objection, it is so ordered.

The table referred to is as follows:

[Actual greater (+); percentage greater (−).]

	Total Big Five.	Swift.	Armour.	Morris.	Wilson.	Cudahy.
1913.						
Actual sales	$1,143,076,033	$400,000,000	$349,897,000	$165,909,000	$122,861,033	$104,409,000
Supposed percentage		408,661,129	334,532,622	171,267,077	114,307,604	114,307,604
Difference		−8,661,129	+15,364,378	−5,358,077	+8,553,432	−9,898,604

	Total Big Five.	Swift.	Armour.	Morris.	Wilson.	Cudahy.
1914.						
Actual sales	$1,200,775,883	$425,000,000	$354,801,000	$158,983,000	$152,870,883	$109,121,000
Supposed percentage		429,289,380	351,419,074	179,912,253	120,077,588	120,077,588
Difference		−4,289,380	+3,381,926	−20,929,253	+32,793,295	−10,956,588
1915.						
Actual sales	$1,295,614,464	$500,000,000	$380,157,000	$177,040,000	$122,255,464	$116,162,000
Supposed percentage		463,195,150	379,174,517	194,121,905	129,561,446	129,561,446
Difference		+36,804,850	+982,483	−17,081,905	−7,305,982	−13,399,446
1916.						
Actual sales	$1,595,709,000	$575,000,000	$479,969,000	$219,781,000	$186,998,000	$133,961,000
Supposed percentage		570,481,925	467,000,195	239,085,080	159,570,900	159,570,900
Difference		+4,518,075	+12,968,805	−19,304,080	+27,427,100	−25,609,900

Mr. SMOOT. Mr. President, now let us carry this comparison just a little further and see how it works out. The Federal Trade Commission and the Senator from Iowa have charged that the percentages found in the "tattered memorandum" and the Traynor letter not only apply to the purchases of cattle, sheep, and hogs separately in the markets of the country, but that they also are an index or a key to the total number of head of all classes purchased in each of the years. I have already pointed out how the number of cattle, hogs, and sheep varied from the alleged key by tens and hundreds of thousands of head in each of the years, but I now desire to present you the result of the figures as applied to the total purchases of all kinds of live stock and a comparison with the results of the total sales in each of the years indicated in the chart.

In other words, in the year 1913 Swift purchased 422,891 head of live stock of all kinds in excess of his usual percentage, as found in the so-called "tattered memorandum" and the Traynor letter, but we find that instead of his percentage of the sales for the year 1913 showing a corresponding increase, we find he is minus $8,661,129 in sales, although having an excess of nearly one-half million head of live stock above his usual percentage.

In the year 1913 Armour had an excess of 237,174 head of live stock of all kinds above his usual percentage. We find that in his percentage of sales he had an excess of $15,364,378. Although Armour had 185,717 excess head of live stock less than Swift, he was able to obtain $15,000,000 more than his percentage of sales, while Swift was minus $8,000,000 in approximating his proportion of the sales.

For the year 1913 Morris & Co. did not purchase their usual percentage of live stock by 357,093 head. In their sales for that year they were short of the usual percentage $5,358,077.

Wilson & Co. were short of their percentage of purchases of live stock for the year 1913, 324,325 head, yet they had an excess in their usual percentage of sales of $8,553,432.

It will be seen by comparing the result of Swift's experience and Wilson's experience that while Swift had approximately three-quarters of a million head of live stock more than Wilson to operate on, Swift lacked $8,000,000 of approximating his percentage of sales, while Wilson exceeded his percentage of sales by more than $8,000,000.

For the year 1913 Cudahy had an excess over his usual percentage of 21,353 head of live stock, yet he was minus in his percentage of sales $9,898,604.

Similar variations occur in each of the years 1914, 1915, and 1916, and I set out at this point a complete analysis showing the total receipts either in excess or short of the usual percentage of live stock of each of the five larger packers, and also the percentage of sales, either excess or minus, for each of the years. I ask that the analysis be inserted in the RECORD without reading.

The PRESIDING OFFICER. Without objection, it is so ordered.

The analysis referred to is as follows:

Comparison of excess and minus percentages of purchases according to the percentages set forth in the alleged percentages of the "tattered memorandum" and the Traynor letter with the percentage of sales figured according to the same percentage.

	Swift.	Armour.	Morris.	Wilson.	Cudahy.
1913.					
Total live stock purchases	+ 422,891	+ 237,174	− 357,093	− 324,325	+ 21,353
Total sales	− 8,661,129	+15,364,378	− 5,358,077	+ 8,553,432	− 9,898,604
1914.					
Total live stock purchases	+ 362,459	+ 111,964	− 376,822	− 192,904	+ 95,303
Total sales	− 4,289,380	+ 3,381,926	−20,929,253	+32,793,295	−10,956,588
1915.					
Total live stock purchases	+ 311,609	+ 187,193	− 359,932	− 173,519	+ 34,649
Total sales	+36,804,850	+ 982,483	−17,081,905	− 7,305,982	−13,399,446
1916.					
Total live stock purchases	+ 273,165	+ 204,349	− 399,837	− 250,285	+ 172,608
Total sales	+ 4,518,075	+12,968,805	−19,304,080	+27,427,100	−25,609,900

Mr. SMOOT. The above analysis shows the amazing result, in view of the charges made by the Federal Trade Commission, that during the four years and in each of the four years Swift had a surplus above his usual percentage in the purchase of live stock ranging from more than one-quarter of a million to nearly one-half of a million head of live stock. In two of the years he was short of his usual percentage of sales several millions of dollars, and had an excess in his usual percentage in 1915 and 1916 ranging from $4,000,000 to $36,000,000.

In the case of Armour & Co. they had an excess in each of the four years above the usual percentage in the purchase of live stock, ranging from 111,000 to 237,000 head. In each of the four years they had an excess of sales above their usual percentage, ranging from $982,000 to $15,364,000.

In the case of Morris & Co. they had a deficit in each of the four years in their purchase of live stock ranging from 357,000 head to 399,000 head per annum. In each of the four years they never approximated the usual percentage of sales, but were minus each of the years in sums ranging from $5,000,000 to more than $20,000,000.

The figures show that in each of the four years Wilson & Co. never purchased their full quota of live stock, being short in numbers ranging from 173,000 to as high as 324,000 head, while in three of the years they exceeded their percentage of sales, ranging from $8,000,000 to $32,000,000. In only one year were they minus in their quota of sales.

Cudahy shows that in each of the four years he received an excess above the usual percentage of live stock, and in every year was minus in his percentage of sales as shown by the chart, ranging from $9,000,000 to $25,000,000.

So it will be seen by these figures that the effort to show that the usual percentages applied to sales as well as to the purchase of live stock is completely exploded. Any conspiracy or agreement which does not work any closer than these figures show can not be said in real earnestness to be effective, and if there ever was any agreement to divide the purchases or the sales of product on a predetermined basis certainly it has not been carried out, and it is obvious that the alleged key found in the "tattered memorandum" and the Traynor letter does not fit the lock ingeniously constructed by the Federal Trade Commission.

It is true that the witnesses who have appeared before the committees of Congress have admitted that there is a more or less fixed position of each of the five packers in the business,

but they have explained that their several positions have been the result of the normal growth of each of those concerns. They have admitted that there is only a slight variation from year to year in the relative positions occupied by each of these concerns, when measured by the small fraction of percentage of growth. They have explained this to be the result of keen competition and watchful management; that each of the five larger concerns is jealous of its position, and, having open and general knowledge of what its competitors are doing in the markets, strives constantly to maintain its share of the volume of business and to increase it wherever it can be done.

I have quoted figures showing the fluctuations in their purchases and in their sales from year to year, which seem to bear out their contentions in this respect.

The witnesses further show that in other lines of business the same phenomena of constant percentages is not an unusual experience.

The record shows that in the death rate of a small town, say, of 100 people, it might vary from 0 to 30 persons in a thousand from year to year, but in larger cities, from 50,000 to 100,000 and up, the death rate does not vary more than a small fraction of 1 per cent from year to year. It may be 16.2 per cent this year or 16.3 per cent next year, and so on.

In the matter of the new premium business of the leading life insurance companies of the country there is a small variation from year to year between the receipts of the largest companies.

The sales of the largest mail-order houses have been compared for a series of years and when put together it is found that while the business has been increasing very rapidly from year to year a most astonishing constancy in the percentage of the total done by each of the mail-order houses was found, yet there has been no charge of any conspiracy between the mail-order houses.

Comparisons were also made with reference to the railroads. On page 1024, part 14, of the hearings before the House Committee on Agriculture, March 11, 1920, figures are shown comparing the total business of many of the railroads of the country. For example, the Great Western, North Western, St. Paul, Soo, Chicago, Burlington & Quincy, and Chicago & Alton were compared. The annual percentage of business of the total done by this group of railroads, in the case of the Great Western, ran 4.4, 4.5, 4.5, 4.3, 3.9, 3.8, 4.1 of the total for the years 1913 to 1919, inclusive. The total of the North Western ran 25.8, 26.7, 26.1, 25.8, 26.2, 25.3, and 26.1 for each of the years.

Also a comparison was made of another group, composed of the Southern Railroad, the Seaboard Air Line, the Louisville & Nashville, and the Atlantic Coast Line. It is shown for the Southern Railroad that their percentage of the total business done by this group covering a number of years was as follows: 35.9, 36, 36.1, 36.3, 36.7, 37.3, 37, 37.5, 39.1, 37.9—a variation of over 1 per cent in one year.

I set out these tables at this point, as they serve as an illustration of the contention made by the large packers in accounting for the apparent uniformity of percentages of purchases of the larger packers:

Total business of western roads.

Year.	Great Western.	North Western.	St. Paul.	Soo.	C., B. & Q.	C. & A.
1913	4.4	25.8	29.2	6.6	29.3	4.7
1914	4.5	26.7	28.9	5.9	29.5	4.5
1915	4.5	26.1	29.5	5.8	29.5	4.6
1916	4.3	25.8	29.9	6.4	29.0	4.6
1917	3.9	26.2	27.3	8.3	29.4	4.9
1918	3.8	25.3	30.4	7.1	28.6	4.8
1919	4.1	26.1	28.2	8.0	28.9	4.7

Total business of southern lines.

Year.	Southern.	Seaboard Air Line.	L. & N.	Atlantic Coast Line.
1910	35.9	12.6	32.8	18.7
1911	36.0	13.0	32.2	18.8
1912	36.1	13.0	31.0	19.0
1913	36.3	13.0	31.5	19.2
1914	36.7	13.2	31.0	19.1
1915	37.3	12.8	31.0	18.9
1916	37.0	12.9	31.9	18.2
1917	37.5	12.5	31.8	18.2
1918	39.1	12.0	31.3	17.6
1919	37.9	12.1	31.4	18.6

Also I set out a table showing the percentages of sales of eight of the mills manufacturing newsprint paper in this country, showing the volume of business transacted by each covering a perior of three years:

Year.	Mill No.—							
	1	2	3	4	5	6	7	8
1916	42.2	15.6	10.5	8.1	7.6	7.2	4.6	4.3
1917	46.5	14.6	10.3	6.5	7.0	7.2	3.7	4.3
1918	44.2	15.1	11.1	6.6	7.2	7.4	3.8	4.5

The packers have also pointed out that the purchase of hogs in the Chicago market made by the smaller packers showed the same constancy from year to year, and it has never been charged that the small packers have any agreement to fix the percentages of their purchases in the markets. There are also some letters and statements of witnesses tending to show that in certain markets of the country where there were two packing houses that there was an equal division of the receipts between such concerns on a basis of 50–50. This has been explained by the packers and other witnesses to apply to the surplus receipts at such a market. It frequently happens that more live stock is shipped into such a market than the trade requirements of either of the packers demand, but a duty devolves upon the packing plants located at such a point to protect the market and to purchase all live stock shipped to such market. If they did not do so, the producers would soon cease to patronize that market, and the plant investment of the packer would soon be lost for want of material on which to operate. The record is full of testimony showing that at each of these markets there are buyers for outside packing companies, also speculators who purchase live stock when the prices are low. The record shows that when the small packer or local butchers, speculators, and others trading upon the market have bought their actual requirements, they retire from the market, and the duty devolves upon the larger packers to absorb all the remaining live stock regardless of whether they need it in their business or not, for the purposes already specified.

Under such circumstances it is not unusual or unreasonable to expect each of the packing concerns located at such a point to carry its end of the burden and to take its reasonable proportionate share of the live stock offered for sale, but even if there is such a rule and such a practice, the record is full of testimony showing that there is competition in the purchase of live stock in all these markets. The small packers, competitors of the five larger packers, have all testified that there is such competition. Many producers of live stock familiar with the method of trading on such markets have likewise testified that there is open and active competition in the purchase of live stock at these market centers. Traders and speculators have also appeared at the hearings and testified to this fact, and they are the keenest competition the packers have on the markets of the country.

So that the point has been made that even if there should be a common understanding between the packers having plants at given points to protect the market by purchasing all the surplus live stock coming to such a market on any particular basis, such an understanding does not operate to the disadvantage of the producer but to his very great advantage, in that a sale is assured for his life stock at any of the public market places of the country to which he may elect to ship his live stock, and if it is true, as they state, that the live stock is sold on a competitive basis, in which the small packers, local butchers, and the speculators bid in competition with the five large packers, and the highest market price of the live stock is actually obtained, it does not seem to be a matter of any consequence to the producer or to the consumer as to what percentage is purchased by any one or more of the larger packers. The public is not particularly concerned in regard to whether Swift slaughters 30 per cent or 35 per cent of the aggregate slaughtered by the five larger packers of the country. The producer is concerned only with obtaining the highest market price for his live stock, while the consumer is concerned only with obtaining the products at a reasonable price.

Many witnesses have testified that these conditions exist, and it seems to me that it requires more than the circumstantial evidence offered in the form of the "tattered memorandum" to overturn the positive testimony of so many witnesses who have personal knowledge of the facts as they exist, especially when it is a fact, as heretofore pointed out, that the figures found in the memorandum do not approximate the percentage of purchases of either of the packers by thousands of head each year, nor of the sales made by each of the packers, ranging into the millions of dollars.

It is also a significant fact that this question of "usual percentage" of purchases was made an issue in the case against some of the packers tried in Chicago in 1912. It was fully charged, and all the facts presented to a jury, and they acquitted the packers of the charge that the law had been violated. In view of this fact it contradicts the assumption of the Senator from Iowa that a jury would determine that the circumstances of fairly constant percentages must necessarily be the result of "an agreement." If I am not mistaken, the Senator from Iowa [Mr. KENYON] was counsel in this particular case, and that a jury passed upon this identical issue without any evidence being submitted by the defendants and the case was decided against the Government.

This disposes of the first fundamental circumstance relied upon by the Federal Trade Commission to establish an unlawful agreement. The positive testimony of witnesses and the lack of consistency in the working out of the theory, both in purchases and sales as attempted to be demonstrated, destroys the force of the circumstance as sufficient proof of a fact so vital in their case. If this circumstance fails, there is little left of the case. It is the keystone in the arch of their structure, and when it fails the whole imaginary structure, built up with so much ingenuity, falls to the ground.

This brings us now to the consideration of the remaining circumstances offered by the commission in the summary of its report, offered as corroborative proof of a conspiracy in restraint of trade. It will be remembered that they could find no evidence of any beef pool such as existed in the early nineties and which I have pointed out is legal according to the Supreme Court of the United States in so far as it restricts shipments of dressed beef to prevent gluts and waste.

The first circumstance which they allege corroborates the theory that the usual percentage division of receipts proves a conspiracy is found in their charge that the packers have an agreement to divide the trade from South America. The commission in its original report included in that alleged conspiracy all of the five packers. After the summary was circulated the absurdity of the charge was pointed out in the fact that Cudahy Packing Co. have no establishment in South America engaged in the packing business, and therefore could not be in such a conspiracy. Before the commission published its other volumes they put a footnote in their report admitting that fact, but nevertheless did not alter their general charge.

The packers showed that the importation of meat from South America was very small and an inconsequential matter. They denied the existence of any agreement to divide the shipments, as charged by the Federal Trade Commission. They also pointed out the fact that at the time of the outbreak of the European war practically all refrigerator ships capable of transporting fresh frozen meats were of British registry and sailing under the British flag. The English Government commandeered all such refrigerated space and used it in transporting fresh meat to supply her civilian population and the armies of the Allies. The British Government had contracts with each of the local British and American packers transacting business in South America and allotted certain definite space in these boats to each of the packers. The amount of space so allotted automatically and definitely fixed the percentage or volume of business which each of the packers were able to transact from South America. All this was done with the sanction of the British Government.

The packers also pointed out that even if it had been true, which they denied, that there existed any agreement to divide shipments on any percentage basis, the total volume of such business was of such inconsequential effect as to make it impossible that it could have affected prices or in any manner restrained trade within the United States. Further, the principal volume of business from South America went to European countries, and Congress has passed an act which authorized American manufacturers to enter into associations and combinations in relation to export trade to foreign countries. Thus the chief corroborating circumstance offered by the commission is exploded.

The third circumstance offered by the commission is the charge that the packers have maintained certain joint funds.

The packers have not denied that in some instances they have contributed to joint funds, but they explained that these funds have been used for entirely legal and proper purposes, generally to protect the industry against unfair attacks and to pay attorneys for defending actions affecting the general industry. Likewise such funds have been raised to promote the welfare of packing-house employees in providing amusements, entertainments, and outings for the families of workingmen, and many other things to promote their social well-being.

It is a matter of knowledge that there is scarcely an organization of any kind in this country relating to any particular branch of business which does not raise joint funds and have associations for legitimate and proper purposes incident to the business.

There is no proof anywhere in the records of all the hearings to show that any of the joint funds raised by the packers were used for any illegal purposes, so it is found that this circumstance also utterly fails to sustain in any way the charges made by the commission.

The fourth circumstance offered by the commission charges that there are alleged agreements relating to other lines than the purchase of live stock and the sale of meats, namely, cheese and lard compound. The packers deny that they have any agreements or understanding in effect relating to any commodity handled by them, whether meat or any of the so-called "unrelated lines." The commission undertakes to support this charge by setting forth certain correspondence quoted on pages 36 and 37 of the summary of its report. It felt so certain of its ground that it was constrained to say:

> The quotations already made would seem to answer affirmatively the President's question, "Are there manipulations, controls, trusts, combinations, conspiracies, or restraints of trade out of harmony with the law or the public interest?"

It is not surprising, understanding the methods used in securing its facts and presenting them without hearings or explanations from the writers of the letters and documents, that they should have made errors in their deductions. The uniform prices referred to in the correspondence quoted related to lard compound. These prices were not the result of a conspiracy or unlawful agreement on the part of the packers, but were adopted at the suggestion of the Food Administration of the Government which undertook to regulate and stabilize the prices of many basic food products during the war, and the correspondence quoted merely demonstrates that the packers were undertaking to carry out the instructions of the Government and to cooperate with it in maintaining its regulations.

This affords a fair illustration of the many misconstructions placed upon memoranda and data collected by the commission.

Thus each of the four principal circumstances relied upon by the Federal Trade Commission to establish its charge can be reasonably explained on another hypothesis than that they were the foundation of an illegal and unlawful conspiracy in restraint of trade.

This brings us to a consideration of the conclusions reached by the Federal Trade Commission predicated upon these four circumstances; that is to say, from these circumstances the Federal Trade Commission presumes that there must exist an illegal combination in restraint of trade, and that the packers are working collusively together to manipulate live-stock markets, restrict interstate and international supplies of food, defraud both the producers of food and consumers, crush effective competition, secure special privileges from railroads, stockyards companies and monopolies, and profiteer.

Now, let us examine into the evidence to see whether these conclusions are justified by the facts. No witness has appeared before any of the hearings, in so far as I have been able to ascertain by an examination of the record, who testified to any fact showing any agreement to manipulate the live-stock markets of this country. A few witnesses, who have been most active in the agitation among the producers, have stated that they believe the markets were manipulated, but have offered no affirmative proof. The general trend of their statements has been predicated upon the conclusion reached by the Federal Trade Commission, based primarily upon the circumstances heretofore pointed out. Each of the larger packers have positively and unequivocally stated that there are no such agreements to manipulate the live-stock markets, and in fact they are not susceptible of manipulation by any group of men. There are at present, at every market center, other buyers than the larger packers, including many of the smaller packers, some of whom buy a sufficient number of live stock each day to materially affect the market prices. It has been shown that frequently the active buying of smaller packers and local butchers, supplemented by the speculators, actually fixes the market price for that particular day. But if it should be conceded that the packers have manipulated the live-stock markets, the records show that they have manipulated them against their own interests. Even a cursory examination of the records will substantiate this statement, because each year from 1910 to 1918 the figures show a constant advance in the average price paid for live stock in the markets of this coun-

try. According to a statement compiled by the Chicago Drovers' Journal, the average yearly price of cattle, per 100 pounds of native beef cattle, was as follows:

Year.	1,500 to 1,800 pounds.	750 to 1,050 pounds.
1910	7.70	5.90
1911	7.00	5.85
1912	9.60	7.10
1913	8.85	7.00
1914	9.75	7.10
1915	9.25	7.70
1916	10.75	7.45
1917	12.75	10.50

The average price paid for beef steers at Chicago in 1918 was $14.65 as compared with $7.70 for the heavier steers and $5.80 for the lighter steers in 1910. The average price of hogs for the same period likewise shows that the packers have manipulated the prices they paid the producer—upward. According to the same journal, the following average prices were paid:

Mixed.

1910	$8.90
1911	6.70
1912	7.60
1913	8.50
1914	8.30
1915	7.20
1916	9.60
1917	15.10
1918	17.45

For lambs the packers paid $16.60 per head, as compared with $8 in 1916 and $7.55 in 1910. So it will be seen that the packers manipulated themselves into paying the producer an increase of nearly 100 per cent in 1918 over the prices they were paying for raw material in 1910.

This has been done notwithstanding the fact that the records show that the number of live stock slaughtered has also shown a great increase. These values have increased in the face of a constantly growing volume of animals marketed each year. According to reports, there were slaughtered at 919 Government-inspected establishments as follows:

Cattle.

1910	7,902,189
1918	9,299,489

Swine.

1910	27,656,021
1918	40,210,847

It is of further interest to note that on July 1, 1918, the relative number of live stock in the United States had increased over July 1, 1917, by the following percentages:

Hogs, all ages, 3.3 per cent; cattle, all classes, 3.9 per cent. Thus it is shown that notwithstanding the large increase of live stock marketed and the increased supply in the hands of the producers, there was a phenomenal increase in the price paid the producer for his product.

The second conclusion reached by the Federal Trade Commission was that the five larger packers restricted interstate and international supplies of food. The United States Department of Agriculture, in the Monthly Crop Reporter for March, 1919, says:

> Meat production in the United States in the total of all classes was 18,865,000,000 pounds in 1914, and in 1918 war-time needs promoted a production of 23,366,000,000 pounds. Undoubtedly the stupendous production of 1918 was never before reached in this country, and certainly not in other countries by long odds.

The United States Food Administration, in a report on "The production of meat in the United States and its distribution during the war," says, concerning beef exports:

> Just before the war began the United States exported somewhat less than 3 per cent of the total production each year, but in 1915 the production jumped to 6 per cent, and in 1918 to 9.65 per cent.

The same authority states that beef exports in 1918 were 773,000,000 pounds, over three and one-half times as much as was exported altogether in the three prewar years of 1911, 1912, and 1913. Concerning pork exports, the Food Administration stated that:

> At the beginning of the war in 1914 a steady rise in exports became apparent, reaching the culmination in 1918 under the stimulus of a large foreign demand and as a result of the conservation practiced by the American people. In February, 1918, extremely urgent demands were made by the Allies for pork shipments to meet their absolute needs. In fact, further prosecution of the war was shown to be directly dependent upon immediate meat and wheat supplies being sent to them. At that time a program was worked out calling for 300,000,000 pounds of pork products per month for the following three months. It was an undertaking that many people considered entirely impossible, but the program was carried out within 25,000,000 of the grand total of 900,000,000 pounds, and the absolute requirements of the Allies were met.

At this point let me ask what would have happened if the packing business of this country had been in charge of the Federal Trade Commission or the clerks making the commission's report?

These facts and figures do not bear out the contention of the Federal Trade Commission that the packers restricted interstate and international supply of food.

CONTROLLED MEAT PRICES.

The third conclusion reached by the Federal Trade Commission was that the five larger packers controlled the prices of dressed meats and other foods. They made this charge, notwithstanding that in another portion of their report they state that there does not exist any beef pool such as existed in the early nineties. Each of the larger packers have denied positively and unequivocally that there is any understanding or agreement to control prices of dressed meats and other foods. No witness, in so far as I have been able to see, has testified to the existence of any such agreement. It is predicated wholly upon the assumption of the Federal Trade Commission. Under the regulations of the Federal Food Administration the packers were allowed to earn 9 per cent on invested capital in the case of edible meat products, which constituted the bulk of their business. If they really did control the prices of dressed meats and other foods they certainly should have been able to take advantage of the limits fixed by the Food Administration, the 9 per cent allowed them by law as a fair maximum. They were unable to do so, and thereby deprived themselves of many millions of dollars which they would have been legally authorized to earn. The United States Food Administration, in its report for the year 1918, among other things says:

> The profits on the controlled products of the packers subject to this control during the first year of such regulation, from November 1, 1917, to November 1, 1918, as shown by audited accounts, were $40,594,935 on an investment average for the year of $714,187,204, a net profit on the total investment for one year, under the rules of the Food Administration, of 5.6 per cent, or considerably less than the maximum allowed by those rules. On the gross sales of $2,434,113,430 the profit of $40,594,935 represents a percentage of only 1.6 per cent.

Does it seem reasonable that if the five larger packers have it within their power to control prices of their products and demand of the consumer whatever they might choose that they would not also be able to earn more than these figures show that they have earned in the past? The very fact that they were unable to earn the 9 per cent allowed during the war, and are showing decreased earnings for 1920 amounting to millions of dollars, shows that they are not able to exercise such power. It must be remembered that they are dealing in a perishable product which must be disposed of promptly. Their goods can not be kept on the shelf, like hardware or dry goods, to await a purchaser at the prices marked thereon, but must be disposed of, even though it be at a loss.

The fourth charge of the Federal Trade Commission is that the five larger packers defraud both the producers and the consumers. No witness has testified to any affirmative fact which tends to support this conclusion. On the other hand, the packers have all testified that such a charge is false and groundless. The United States Department of Agriculture in 1917 investigated the marketing of nine lots of cattle from the farm to the table. They found that on the average out of every dollar paid by the consumer for the beef from 15 to 20 cents went to the retailer, from 60⅔ to 75 cents to the live-stock producer, and from 5 to 7 cents to the packer. The small remainder went for shipping and yardage. Out of the 5 to 7 cents received by the packer he must pay his expenses of killing, dressing, icing, shipping, selling, insurance, taxes, wages, depreciation, and his profit. That rate of distribution of the proceeds can hardly be called fraudulent in so far as the packer is concerned. Moreover, the packers claim that out of every dollar that they receive for meat from 85 to 90 cents goes to pay for live stock. If this be true, it can not be called defrauding the producers. The facts in relation to the consumer, from the testimony at the hearings, seems to be even better. Not one of the larger packers averaged as much as 2 cents profit on each dollar's worth of meat sold in 1918. The year 1919 was not so good as 1918, and from the statements of packers, now being issued for the year 1920, they seem to be even worse. It is apparent from the facts developed in these years that the rate of profit charged by the packer on his operations is less than that of any other industry in this country or in the world.

The next conclusion reached by the Federal Trade Commission was that the five larger packers were engaged in a conspiracy to crush effective competition. The Senator from Iowa also stated in the course of his speech that there were a few independents but that they existed by sufferance. The five larger packers have denied emphatically every charge that they were engaged in any effort to crush competition. Although

there have been nine hearings before committees of Congress on this subject, neither the Federal Trade Commission nor the proponents of this legislation have been able to produce a single small packer who testifies that this charge is true. On the contrary, a large number of the representative smaller packers have appeared before these committees and refuted this charge. In fact, they have uniformly stated that they have found the competition of the larger packers keen but fair, and in many respects they would rather have the competition of the larger packers than that of some of the smaller ones.

Some of the smaller packers have testified that the larger packers have been a great aid to them in their business, have furnished them cars at times when they could not be secured from other sources, and have bought from them their surplus products which could not otherwise be marketed to an advantage to themselves. The Federal Trade Commission in part 5 of its report is forced to say:

> Thus it appears that in 1914, 75 independent packers earned 12.6 per cent on net worth, while the five great packers only earned 8.3 per cent. In 1915 the five great packers earned less than 75 independent packers by a narrow margin. In 1916 the great packers averaged 18.5 per cent, against the independent packers' 22.1 per cent. The average for the three years shows a rate of profitableness considerably to the advantage of the independents.

In another point in their report the commission says:

> Table 16 indicates that the rate of return for the independent beef packers averages 2.2 cents, for the pork packers 2.4 cents, for the mixed packers 1.7 cents, and for the 117 companies combined 2.2 cents per dollar of sales. Thus it appears that the independent companies as a class, while making about the same profit on sales as the great companies, represent a high ratio on invesment (18.1 per cent), and the contention of the great packers that only a large organization can exist on these rates is not sustained by the facts.

Whatever the merits of their contention, the facts from the records and reports of the Federal Trade Commission on this end show that the small packer is maintaining himself in the face of this competition and is not being crushed as charged by the Federal Trade Commission. It may be of interest in this connection to show what some of the smaller packers at Chicago are doing. The records show that in the year 1910 the smaller packer located at Chicago slaughtered 1,302,200 hogs, which represented 23.31 per cent of the total receipts of that market. This number has increased each year until in the year 1915 they slaughtered 2,657,400 head, or an increase of 104.07 per cent over 1910.

Mr. KING. Mr. President, will my colleague yield?

Mr. SMOOT. Certainly.

Mr. KING. My colleague stated a few moments ago, as I recall, that at a certain period there were between 800 and 900 slaughterhouses or places that were being inspected by the Government. I was wondering, apropos of the statement just made, as to the increase in the activities of the independents, what proportion of the 800 or 900 places that were being inspected by the Government were owned by the packers and what proportion by the independents.

Mr. SMOOT. My colleague must have misunderstood me. I said 9 or 10.

In the year 1916 they slaughtered 3,334,739 head, which represented an increase of 156.07 per cent over the year 1910, which shows that notwithstanding the charges of the commission that the five larger packers control and dominate the market and destroy competition, these smaller packers have been able to increase their business through these years so that they slaughtered 45.05 per cent of the total slaughter of the Chicago market as against 28.2 per cent in 1910, which represents an increase of 2,032,439 head for the year 1916 over the year 1910. In the year 1916 the five larger packers slaughtered 1,485,800 head more hogs at the Chicago markets than they slaughtered in 1910, while the small packers, during the same year, slaughtered 3,032,439 hogs more than they slaughtered in 1910.

The next charge made by the commission was that the five larger packers secure special privileges from railroads, stockyards companies, and municipalities. The five larger packers have denied the truth of these statements. No witness has testified to any fact to support those charges. If they are true, there are ample laws upon the books to punish same, but it is significant that the Federal Trade Commission have not filed any charges against the packers on such complaints, which they would have the power to do under the law.

The last of their charges is that the five larger packers have profiteered. This point has already been covered to a large extent. The claim that the profits of the packers have not exceeded, or averaged, more than 2 cents on the dollar of sales covering a long period of years has not been refuted by any reliable authority, and until that is done the charge can not be accepted as a fact.

As I read the testimony before the committees, the general consensus of opinion has been that the profits of the packers have been fair and reasonable considering the perishable nature of their product and the efficient service rendered to the public; that this service has been efficient and economical, and that they have been fair to their competitors.

Under these circumstances it seems to me that the record not only shows that the four principal circumstances relied upon by the Federal Trade Commission to substantiate their charge of an illegal conspiracy have fallen, but all the conclusions which they predicated upon such a hypothesis have likewise been refuted by the preponderance of the testimony taken before the several committees of Congress. If this be true, then I ask the Senate wherein is there justification or excuse for the creation of a Federal live-stock commission to be invested with arbitrary, autocratic powers such as have never before been placed over private business in this country?

Mr. President, I have some other matters that I desired to present to the Senate. I wanted to show to the Senate where the profiteering in meats is, but time will not permit.

Mr. STERLING. Mr. President, I desire to occupy the time very briefly in explanation of a substitute to the pending bill, which was presented on the calendar day of January 18. I offer it not through any ambition to have adopted a substitute to the pending bill, but the principal change sought to be made by the substitute involved so many other changes in the bill that I thought when I drew the substitute that that was the best form in which to present the matter to the Senate. At present, however, I think the matter may be reached by amendments, and at the proper time I shall determine whether to offer the substitute or to offer amendments which will cover the features involved in the substitute.

Mr. President, we have heard a great deal recently about the creation of so many governmental commissions. We have heard a great deal of complaint, and the question has been asked again and again if we were going to have a Government entirely bureaucratic or a Government of commissions. It occurred to me, as I thought of the bill and of its main features, and as I thought of the instrumentalities which we already have at hand, that there was no necessity for a bill creating another and an additional commission with great powers such as are conferred by the bill upon a so-called live-stock commission.

I have thought of the powers and the duties conferred upon the Federal Trade Commission which are akin for the most part to the powers conferred upon the live-stock commission created in the bill, and I have wondered if, by conferring these powers upon the Federal Trade Commission, we would not reach the same result exactly, and perhaps in a more efficient way, than we would in creating a new commission with all the expense attendant thereon.

With that thought in view, I have offered a substitute, and I am now going to call attention to the main features of the substitute. I think I can do that better by referring to the manner in which I would amend the bill. If Senators will follow the bill with the suggestions I make in regard to amendments they will have, I think, a very clear idea of how the bill will stand should the amendments be agreed to, or what the substitute will be if adopted.

In pursuance of the plan to have the Federal Trade Commission do the work, make the investigations and bring prosecutions against those who violate the law, I have stricken out, on page 2, in lines 5 and 6, the words "live-stock commission created by this act" and inserted in lieu thereof the words "Trade Commission," so that portion of lines 5 and 6 will read, "The term 'commission' means the 'Federal Trade Commission.'"

Mr. POMERENE. Mr. President, will the Senator yield?

Mr. STERLING. Certainly.

Mr. POMERENE. I wish to ask the Senator his construction of section 5 of the original bill. In his judgment, are the powers conferred upon the live-stock commission exclusive of the powers which the Federal Trade Commission can now exercise with respect to the packers, or would the powers of the live-stock commission and the Federal Trade Commission be concurrent?

Mr. STERLING. My opinion is that they would be concurrent powers.

Mr. POMERENE. That is my judgment about it as the bill is drawn. In other words, there could be two investigations going on with respect to the same subject matter, one by the Federal Trade Commission and the other by the live-stock commission.

Mr. STERLING. Exactly.

A second amendment would be the striking out of sections 3, 4, 5, 7, 8, and 9 of title 2 of the bill. These sections, as will

be observed, for the most part have to do with the constitution of the live-stock commission itself. Of course, if we substitute the Federal Trade Commission in place of the live-stock commission, the language should be stricken out which confers powers and duties upon and provides for the constitution of the live-stock commission.

Mr. POMERENE. In this connection may I ask the Senator another question?

Mr. STERLING. Certainly.

Mr. POMERENE. Section 6 of the pending bill, it seems to me, gives to the Federal Trade Commission identically the same powers and duties which are now exercised and performed by the Bureau of Markets in the Department of Agriculture. Does not the Senator's proposed substitute also duplicate that provision? In other words——

Mr. STERLING. I thought that the Federal Trade Commission, if the powers to regulate the packers' business are conferred upon them, should have the powers involved in section 6 distinctly. Section 6 provides that:

> The commission shall have all the powers and duties heretofore exercised or performed by the Bureau of Markets in the Department of Agriculture relating to the acquisition and dissemination of information regarding the production, distribution, and consumption of live stock or live-stock products. It shall investigate and ascertain the demand for, the supply, consumption, costs, and prices of, and all other facts relating to the ownership, production, transportation, manufacture, storage, handling, or distribution of live stock or live-stock products, including operations on and the ownership of stock yards.

Without examining the powers conferred upon the Bureau of Markets, I have thought those were wholesome powers to confer upon the Federal Trade Commission.

Mr. POMERENE. Mr. President, if the original bill is adopted or if the substitute which is offered by the Senator from South Dakota be adopted, I think that I agree with him that those powers should be exercised by one commission or the other, if they are to be exercised; but it seems to me that in the event of the adoption of either the original bill or the substitute, we should eliminate the bureau in the Agricultural Department, because certainly we ought not to duplicate the expense.

Mr. STERLING. I think the Senator from Ohio is right about that, but here is a power conferred that I think can very well be exercised by any commission that has charge of these great industries.

Another amendment would be, on page 11, subdivision (f), after the word "or," in line 9, to add the words "the rules, regulations, and orders made hereunder," and to strike out subdivision "(g)." I think the reason for the amendment will be obvious at once, because subdivision (g) repeats the language of subdivision (f), except that at the end of subdivision (g) we find the words "and the rules, regulations, and orders made hereunder." Those words probably should be added to subdivision (f), but the remainder of subdivision (g) is largely a repetition of the language of subdivision (f).

Mr. KING. Mr. President——

The PRESIDING OFFICER. Does the Senator from South Dakota yield to the Senator from Utah?

Mr. STERLING. I yield.

Mr. KING. I find from an examination of the bill that reference is repeatedly made to the power of the commission to promulgate rules, orders, and regulations. Then, there are a number of penal provisions, making a violation of any rule or order or regulation a misdemeanor, subject to heavy fine and to other heavy penalties. Has the Senator from South Dakota any suggestion to make with respect to those provisions or as to any limitation upon the power of the commission to make its orders and regulations penal in character?

Mr. STERLING. If the Senator will examine the last section of the proposed substitute, he will find that all the powers heretofore conferred upon the Federal Trade Commission are conferred upon that commission for the purposes of this act, and the procedure is to be the same as provided by the Federal Trade Commission act.

Mr. KING. I beg the Senator's pardon, but he speaks of a proposed substitute. Has he offered a proposed substitute?

Mr. STERLING. I have offered a substitute, which the Senator will find has been printed and placed upon the desks of Senators.

Mr. KING. I have not had the opportunity of seeing it. Just one other question, if the Senator will pardon me.

Mr. STERLING. Yes.

Mr. KING. Perhaps I did not make myself clear, but I wish to ask, has the Senator from South Dakota reached any conclusion as to the wisdom of committing to this proposed board to be created by the pending bill the power to ordain and promulgate rules and regulations and orders and then make it an offense to violate them?

Mr. STERLING. Yes; I have reached some conclusion upon that question, Mr. President.

Mr. KING. Without restrictions upon the power of the commission to issue such rules, regulations, and orders and upon their character?

Mr. STERLING. I think that it is within the power of Congress to confer upon a commission the power to make rules and regulations and to issue orders and to provide also a penalty for the violation of such rules and regulations, for if the rule or the regulation is made in pursuance of law, that rule or regulation is itself law, and for the violation of the rule or regulation there may be a punishment imposed.

Mr. KING. Mr. President, if the Senator will pardon me, I shall not challenge the constitutionality of an act that commits to a commission the power to promulgate rules, orders, and regulations and which also contains a provision that a violation of such rules or orders and regulations shall constitute a penal offense; and yet I very much doubt the wisdom and the propriety of such procedure. However, does not the Senator realize that there is distinction between what might be denominated a governmental agency, such, for instance, as the Interior Department and the Forest Service, which is a branch of it, and rules and regulations which may be promulgated by that executive instrumentality, and rules and regulations and orders which may be formulated and promulgated by some independent agency which is further removed from the Government, such as a commission of the character proposed?

Mr. STERLING. Oh, there may be cases, Mr. President, where there would be a distinction between a rule or regulation promulgated by a department of the Government and a rule or regulation promulgated by a commission; but, I think, perhaps, within the scope of the powers of the commission, as those powers have been conferred by Congress, it is proper to authorize the commission to make the rules and regulations to carry out the orders that it may make.

Mr. KENYON. Mr. President——

The PRESIDING OFFICER. Does the Senator from South Dakota yield to the Senator from Iowa?

Mr. STERLING. I yield.

Mr. KENYON. The Senator from Utah [Mr. KING] has suggested that there are no limitations on that provision of the bill. I wish to call the attention of the Senator from Utah to the bill as it is in that respect. Suppose rules and regulations were made by the commission under the authority of the law, if the bill shall become a law, within 30 days an appeal may be taken from the commission to the circuit court of appeals. If then the action of the commission is affirmed by the circuit court of appeals, there is the commission of no crime until there is a further violation. I think that fact has been lost sight of. The Senator from Missouri the other day criticized the proposed legislation for that very reason; but we were careful to meet that objection, because there are a good many Senators who think that no one connected with any department or board ought to have the right to make rules and regulations the violation of which shall constitute a crime. We have safeguarded that.

However, as the Senator from South Dakota [Mr. STERLING] has said, there are cases—and I presume the Senator from Utah is familiar with them—which have gone before the Supreme Court of the United States where the court have held that it is no delegation of legislative power for the Secretary of Agriculture to be empowered to make rules, as he has done in many cases; for instance, in relation to forest reservations. The court have held that to be a proper delegation of power. The committee, however, has, out of an abundance of caution, limited that power of the commission.

Mr. EDGE. Mr. President——

The PRESIDING OFFICER. Does the Senator from South Dakota yield to the Senator from New Jersey?

Mr. STERLING. I yield.

Mr. EDGE. I should like to ask another question, following up the reply of the Senator from Iowa [Mr. KENYON], if the Senator from South Dakota will permit me to do so.

Mr. STERLING. I yield to the Senator for that purpose.

Mr. EDGE. Does not the power of the commission as provided in the original bill go even a step farther than that? After the rules and regulations have been promulgated and complaint has been filed and the commission has acted, and on appeal the action of the commission is affirmed by the circuit court of appeals, a violation of the order of the commission would be the subject of further investigation by the commission. Is it not a fact that then the commission tries the case and decides as to the guilt and the punishment? In other words, the commission really provide the law, or the rule and regulation, which is the same thing, try the case, decide as to the guilt or inno-

cence of the party accused, and mete out the punishment? Is not that correct?

Mr. KENYON. No. It may be said that the commission tries the case when complaint is brought, or they may establish a rule without reference to any complaint at all. Then at the end of 30 days that is binding unless the party takes an appeal. If he takes an appeal to the circuit court of appeals and that appeal is sustained, then it is final; if it is overruled, of course, that is the end of it. If it is sustained, there must be a subsequent violation of it before it becomes a criminal offense; but the punishment would not be in the hands of the commission, but would be with the court.

Mr. EDGE. If there is a subsequent violation of it, however, then the commission would have entire jurisdiction?

Mr. KENYON. Oh, no.

Mr. EDGE. That is the question I am asking.

Mr. KENYON. Then it becomes a question for the courts. Of course, the bill provides the punishment if they continue to violate the law, but the punishment becomes a question for the courts.

Mr. EDGE. The commission, however, tries the case and decides as to the issue.

Mr. KENYON. Originally, before it goes to the appellate court. I want to be perfectly fair, and I say that there is a restriction upon the hearing in the upper court. It is not a de novo hearing, but if there is substantial evidence to support the action of the commission, that is sufficient.

Mr. STERLING. Mr. President, continuing with reference to the proposed amendments, I would strike out section 15 of the bill. The bill as amended by the committee, according to the copy which I have before me, strikes out a good part of section 15, but that which remains reads as follows:

> It shall be the duty of every packer and operator to comply with the provisions of this act, and the rules, regulations, and orders which the commission may from time to time prescribe in conformity with this act.

I do not believe it is necessary, after we have framed a section of a proposed statute prescribing certain duties, to add thereto that it shall be the duty of the citizen to obey the law or any rule or regulation that is made under the law or in pursuance of it. That is wholly unnecessary, and, therefore, the reason to amend by striking it out.

I would further strike out section 17 and subdivisions (a), (b), and (c) of section 18, found on page 14 of the bill. I think all in italics in section 17, being the amendment reported by the committee, is a repetition, word for word, of what already occurs in the bill at another place.

Mr. KENYON. Mr. President, will the Senator point out the other place, if he knows of any other place where that clause occurs in the bill?

Mr. STERLING. I think I can, if I may have a little time. I do not find it at this moment, but that was clearly my impression as I read it, I will say to the Senator from Iowa.

Mr. KENYON. I think the Senator from South Dakota is mistaken about that.

Mr. STERLING. It is barely possible now that I have this bill confused with the Federal Trade Commission act. I had it marked "repetition"; but the language, as I think the Senator will agree with me, is in the Federal Trade Commission act.

Mr. KENYON. And we placed the language in as a committee amendment in order to conform with that act.

Mr. STERLING. I wish to say that very much of the language here providing for procedure, prescribing penalties, and so forth, is taken from the Federal Trade Commission act. That runs throughout the bill and throughout all of the title relating to the procedure for violations.

The latter part of section 17, that following the part in italics, is practically covered by the first paragraph of section 10 of the Federal Trade Commission act. I would strike out subdivisions (a), (b), and (c) of section 18; and why? Because they are covered by paragraph 2 of section 10 of the Federal Trade Commission act. I would strike out sections 20, 21, and 22; and in doing that I would call attention to section 5 of the Federal Trade Commission act, under which section the proceedings are substantially as they are provided for in the pending bill and under section 20 of the pending bill.

Section 21 I move to strike out.

What is the difference between section 21 and the Federal Trade Commission act, Mr. President? The distinction between the two is simply this: Under the Federal Trade Commission act it is for the commission, in case of the violation of an order to cease or desist from any unfair method or practice in competition, to invoke the aid of the court; but under section 21 of the bill it is for the individual against whom the order is made to invoke the aid of the court instead of the commission. That is the difference between the two.

Mr. KENYON. Mr. President, my attention was diverted for a moment. Will the Senator state that difference again so that I will have no question about it?

Mr. STERLING. In the Federal Trade Commission act, where an order is made, for example, that a corporation shall cease or desist from any alleged or proven unfair method or practice in competition or trade, the commission must take the initiative in invoking the aid of the court, as a general proposition, although the individual may seek a review of the order of the commission; but under the bill, according to section 21, it is for the individual against whom the order is made to invoke the aid of the court.

Mr. KENYON. I am glad the Senator stated that difference. In other words, this procedure follows the interstate commerce act instead of the Federal Trade Commission act?

Mr. STERLING. Yes. I have moved, or shall move, to strike out section 21; but, after all, it is a matter of not so very much consequence. I should not be a stickler by any means for striking out section 21, thus reversing, as it were, that course of procedure.

Mr. WALSH of Montana. Mr. President, I am desirous of following the argument of the Senator from South Dakota; and I am really curious to know why he calls attention to this difference between the procedure prescribed by this bill and the procedure prescribed by the Federal Trade Commission act, and whether he prefers the procedure prescribed by the Federal Trade Commission act, and, if he does, why he prefers that procedure? It occurred to me that it was a fairer method to permit the review as prescribed in the pending bill. Under the Federal Trade Commission act the order goes, and the order is final, and there is no opportunity for a review in the court until either the one party or the other begins proceedings in the court for an enforcement or a cancellation of the order; but here a right of appeal is given to the court, so that the order does not even become final.

In effect, it seems to me, the two methods are substantially identical. So far as I can see, the substantial rights are not different under either procedure; and I should be very glad to hear from the Senator on that point.

Mr. STERLING. I do not think the substantial rights of the parties differ, except that under the Federal Trade Commission act it is incumbent upon the commission itself to proceed in court in the first instance in case the order to cease or desist from the unfair method in competition is not complied with, whereas here the individual complaining of the order must appeal therefrom.

Mr. WALSH of Montana. Mr. President, let me call the attention of the Senator to the fact that that is an added protection to the person proceeded against, because he then would have the opportunity of a review in the court, and when the court finally made the ruling, if it was adverse to him, it would be just the same as though the commission had prosecuted the proceedings under the Federal Trade Commission act; so that in effect it does not seem to me that there is the slightest difference between the two systems of procedure.

Mr. STERLING. I agree with the Senator from Montana that in effect they do not much differ, and I am not at all particular about striking out section 21, as I have already stated.

Section 22 I move to strike out, for the simple reason that it is the same in substance as provided for already in the Federal Trade Commission act. The language is much the same. See page 4 of the Federal Trade Commission act.

Another amendment: Beginning with line 4, on page 21, strike out all down to and including line 2, on page 22.

Mr. KENYON. Mr. President, may I ask the Senator a question?

Mr. STERLING. I yield.

Mr. KENYON. I was not able to be present when the Senator started. As I understand, the Senator does not have a series of motions to strike out, which might be inferred from what he has said, but his idea is embodied entirely in this substitute?

Mr. STERLING. It is embodied entirely in the substitute; but, as I stated when I began, I was not certain whether I should offer amendments to cover the features of the substitute or offer the substitute itself. I am not particular about that. I think now I shall probably offer them by way of amendment.

Mr. POMERENE. Mr. President, will it interrupt the Senator if I ask him a question?

Mr. STERLING. Not at all.

Mr. POMERENE. I should like the attention also of the Senator from Iowa.

The amendment of the Senator from South Dakota proposes to strike out certain parts of section 25. This is Title V, the

subject of which is "Voluntary registration of packers and stockyards"; and then it provides for the voluntary registration of these packers. In other words, there is nothing compulsory about it. Now, it seems to me that either they ought to be registered or they ought not to be registered. If it is a wise thing to register them, then we should make it compulsory. If it is to be purely voluntary, then it seems to me a packer or a stockyard owner will not register if he feels that any restriction is going to be placed upon him.

Again, if you will consider section 25 in connection with section 10, you will find that section 10 confers upon the commission the power to adopt certain rules and regulations. That is a plenary power. There is nothing that could be desired beyond what is contained in section 10, and it seems to me that everything the committee could hope to derive from the registration as provided in section 25 is already conferred upon the commission by section 10.

Again, let us assume for the sake of the argument that certain of these stockyard men or packers have registered, and they have failed to comply with the rules which are adopted by the commission under section 25 with respect to registration: Where will they be if their certificate is withdrawn from them? Why, certainly they would still be subject to the provisions of section 10; and so it seems to me that nothing whatsoever is gained by section 25. It provides in a general way on page 22 as to what shall be the duties of the registrant, and in section 23 it says what shall be the duties of the commission, and then goes on to detail them; but the duties of the registrant and the duties of the commission are already comprehended in section 10, so that it seems to me we are inserting here certain provisions that will be entirely nugatory.

Mr. KENYON. Mr. President——

Mr. STERLING. I yield to the Senator from Iowa.

Mr. KENYON. I do not like to take the Senator's time, but I think perhaps discussion now helps to abbreviate discussion in the future. I will say to the Senator from Ohio that the registration provided for in title 5 is, as we understand it, entirely voluntary; but the Senator from New York [Mr. WADSWORTH] made an argument some time ago to show that it amounted to compulsory registration. That comes back to this:

A compulsory registration would be practically the same as a license. Some of the bills that were originally introduced, including the one I introduced, provided for a license system. The committee were not willing to follow that. The majority of the committee are not willing to lay down the rule that corporations engaged in this business in interstate commerce shall be licensed. That is a proposition that received a good deal of consideration, and the Senator from Minnesota has introduced a bill along that line.

This is an experiment in establishing public markets, to try to get rid of the long toll line between the producer and the consumer, and to enable those who desire to do this thing voluntarily, with no compulsion, to undertake it. Then, when they do, the Government furnishes them certain lines of information.

Mr. POMERENE. I did not hear the reasons given by the Senator from New York—in fact, I did not hear his speech—but I am a little bit surprised that he or anybody else should say that the provisions of section 25 are compulsory, because the very first sentence of section 25 is to this effect:

The commission *may*, upon application by any individual—

And so forth.

Mr. KENYON. I hesitate to undertake to give the thought of the Senator from New York, but, as I remember, it was that if certain competitors commenced to register, all others would be compelled to register, because there would be certain advantages in the registration to the party who was registered, and consequently the competitor would be forced to put himself in the same position.

Mr. POMERENE. If you are going on the theory that these provisions in section 25 are going to be wholly for the advantage of the packer, then I can follow the Senator from Iowa.

Mr. KENYON. They are for the advantage of consumers, to enable them to establish public markets, where the consumer will not be compelled to pay the toll he is now forced to pay. That is really a provision in the interest of the consumers of the country.

Mr. POMERENE. May I ask the Senator what protection can either the packer or the consumer receive under section 25 which he would not receive under section 10? Further, what authority is given to the commission under section 25 which is not already conferred by section 10?

Mr. KENYON. A great deal of authority, I will say to the Senator. One of the things which has been complained against very strongly here on the floor is that title 5 forces them to register, and then that it gives the tremendous powers, even as has been suggested here, under subdivision 2, of investigating the financial resources and credit and standing of the applicant, and the location and the character and extent of grounds, and so forth. It gives a general supervision. That would be faulty if it was compulsory.

Mr. POMERENE. I can not follow the Senator in his logic in this matter.

Mr. KENYON. I am sorry; I know it is all my fault.

Mr. POMERENE. The Senator argues this question as if it was a compulsory registration, and at the same time the title is headed as follows: "Voluntary registration of packers and stockyards."

Mr. KENYON. If the Senator understands me to argue that it provides for compulsory registration, I certainly have not made myself clear. I was giving the argument suggested by the Senator from New York [Mr. WADSWORTH] that it was compulsory. I say it is not. It is purely voluntary. It is purely an experiment to see what we can do in the way of public markets.

Mr. POMERENE. Then my guess is that if it is going to be voluntary we can assume that not one of these packers is going to submit himself to voluntary restrictions. They will submit themselves to compulsory restrictions, if we compel them to do it.

Mr. KENYON. I feel like asking the pardon of the Senator from South Dakota for trespassing on his time; but suppose a packer does not, and suppose some people in the city of New York want to establish a voluntary market and see what they can work out in the shape of a public market. They register, and as a result they get certain advantages, certain information, and certain help from the Government. The packers do not have to go into it, and it is not the intention to force them into it.

Mr. POMERENE. The Senator from Iowa, if he will pardon me, is basing a conclusion upon a certain hypothesis.

Mr. KENYON. Most conclusions are based on hypotheses.

Mr. POMERENE. I know that; but I do not see any foundation for this hypothesis. The Senator says, suppose some men in New York City come in and voluntarily register and submit themselves to certain restrictions which are offensive to certain other packers, then other packers may come in. I say that is the goal to which we are driven.

Mr. KENYON. I wonder whether the trouble is with the Senator from Ohio or myself. We seem to be absolutely at cross-purposes. I suppose it is due to my trying to give the argument of the Senator from New York that it is compulsory registration and trying to give my own argument that it is not compulsory registration. I want to say further that the bill is complete without Title V, as far as the packers are concerned. The sole purpose the committee had in mind was to give an opportunity to the consumers of the country to experiment with the proposition of trying to establish public markets, in the interest of getting things cheaper for the consumers.

Mr. POMERENE. Then I think I am compelled to conclude that the Senator has answered the Senator from New York, and therefore these provisions are voluntary. For that reason, in my judgment, the title will give no relief whatsoever. I beg the pardon of the Senator from South Dakota.

Mr. KENYON. I beg his pardon, too; but I am glad I have convinced the Senator from Ohio that I have answered the argument of the Senator from New York.

Mr. STERLING. But after all, Mr. President, I am inclined to think that the Senator from Iowa agrees to some extent, anyhow, with the Senator from New York. Under his own argument, of course, this bill does not in terms compel registration. It says they "may." But according to the argument of the Senator from Iowa the natural effect will be to compel those who would find it otherwise inconvenient or undesirable to register, to register. That is the object.

Mr. POMERENE. That is, I suspect, on the theory that if one fox gets its tail cut off in a trap it seeks to persuade all the other foxes to have their tails cut off.

Mr. WALSH of Montana. Mr. President, I have before me a document furnished by the Association of Allied Packers, or some such association. I presume all other Senators have received copies. In this document a statement is made to the effect that this is really a compulsory and not a voluntary provision, and the Senator has now stated what is therein stated, namely, that although it is purely voluntary, in effect it would be compulsory. Will the Senator just elaborate and tell us how it is that the packer will be obliged to come in and register under that provision?

Mr. STERLING. Because it is deemed that he will have certain privileges as a registrant, probably, in the way of informa-

tion furnished, in the way of guidance given, and so on. Other operators and stockyard men will feel that because of this governmental sanction, and the prestige it may give, they must themselves come in, although prior to that time keeping within the law, conducting the business according to every rule and every regulation made, under section 10, as stated by the Senator from Ohio, for example, or any other rule or regulation which may be made.

Mr. WALSH of Montana. The Senator has by his statement only confirmed me in the opinion that it is purely voluntary and not compulsory. As I understand him, the registrant, if he cares to come under this provision and subject himself to all the inconveniences which are herein prescribed, will have some corresponding benefits. Assume that some people come in and register. They subject themselves to all the inconveniences, and they get all the benefits. As I understand the Senator, the packer who does not want to come in, recognizing that his competitor has some benefits accruing by reason of this provision, will be obliged to come in; but it will be purely voluntary upon his part. He will weigh the inconveniences and the burdens and the annoyances, upon the one hand, against the advantages which accrue to him by virtue of registration, and it will be up to him to say whether he will register or not. So I can not understand that there will be any compulsory feature about it.

Mr. STERLING. Mr. President, I can not help but think that a voluntary system—I mean as a rule, and without reference to registration—is the proper system, and that everyone of these operators should be subjected to certain simple rules and regulations to be prescribed by the Federal Trade Commission, without any registration system whatever.

Mr. OWEN. Mr. President——

The PRESIDING OFFICER (Mr. TOWNSEND in the chair). Does the Senator from South Dakota yield to the Senator from Oklahoma?

Mr. STERLING. I yield.

Mr. OWEN. As I understand the object of title 5 it is to induce persons who are not now in the packing business to enter it and engage in competition, and in that way promote competition by offering certain advantages to those who do register, the idea being that that may serve to induce but not to compel the packers who are now in business to register in order that they may have the same advantages.

Mr. STERLING. There are certain things, Mr. President, which the commission may well do with reference to all operators without requiring any registration, and if the Senate will permit me I will call attention to those provisions of the pending bill which I propose to preserve. It seems to me they are wholesome rules governing stockyard men and should be enforced upon all equally and alike.

For example, I provide in the substitute that it will be the duty of every operator to provide and maintain or secure when necessary and practicable adequate railroad connections with its place of business the same as in the bill.

I provide, further, the same as in the bill that they shall—

furnish the services and facilities of its business on fair and reasonable terms and without unjust discrimination to persons applying for such service and facilities: *Provided*, That it shall set aside such portion of the facilities of its business as determined by the commission as may reasonably be necessary to accommodate small shippers and local patrons;

(3) To exercise such care of the live stock, live-stock products, and perishable foodstuffs handled by it as may be necessary to prevent undue loss in connection therewith;

(4) To maintain sanitary conditions in the conduct of its business;

(5) Otherwise to conduct its business in such manner as may be prescribed in rules, regulations, and orders issued under this section by the commission to carry out the purposes hereof.

(b) The commission may from time to time cause inspections to be made of the places of business and operations of operators to determine their compliance with the provisions of this section and the rules, regulations, and orders issued hereunder.

Mr. President, what is the object of this legislation? It is to protect the public against both the packers and the stockyard men, and it seems to me that is as far as we need to go, and we can do that by these provisions of the statute, and the rules and regulations we authorize to be made in pursuance of the statute. The substitute provides further that it shall be the duty of the commission, so far as the operators or stockyard men are concerned, to—

(1) Prepare standardized plans and specifications for grounds, buildings, and other facilities suitable for the business conducted or to be conducted by operators, and to furnish such plans and specifications free of charge to such operators who have given assurances of undertaking the construction and operation of such buildings and facilities—

and that whether the operator has registered or not. It is probably true that the commission itself, because of its business and the other duties it has to perform, will be familiar with the plans and specifications which will be most suitable for the purpose of stockyard operations and the protection of the public.

Mr. POMERENE. Mr. President——

The PRESIDING OFFICER. Does the Senator from South Dakota yield to the Senator from Ohio?

Mr. STERLING. I yield.

Mr. POMERENE. Under the bill pending these standardized plans and specifications are only to be for the benefit of the registrant.

Mr. STERLING. Certainly, under the provisions of the bill.

Mr. POMERENE. If they are a good thing for the man who has registered, and if those plans are good things for the public, then it seems all packers and all stockyards should have the benefit of them.

Mr. STERLING. That is my theory exactly, I will say to the Senator from Ohio.

Another of the duties of the commission, whether the packers are registered or not, is to—

(2) Furnish to operators reports embodying existing knowledge concerning satisfactory and economical appliances and methods of food preservation by cold storage, freezing, cooking, dehydration, or otherwise, and of all improvements in the art, and to detail persons experienced in such art to consult and advise with operators.

(3) As far as practicable, when requested by any such operator, provide for the inspection by agents of the commission of the live stock, live-stock products, or perishable foodstuffs received or distributed by such operator to determine the quality, quantity, or condition thereof, and for the issuance by such agents of certificates showing the results of such inspection; and in the conduct of such inspections to cooperate with duly authorized local authorities. Such certificates shall be accepted in the courts of the United States and of the States as prima facie evidence of the quality, quantity, or condition at the time and place of inspection of the live stock, live-stock products, or perishable foodstuffs covered thereby.

Mr. SHERMAN. Mr. President——

The PRESIDING OFFICER. Does the Senator from South Dakota yield to the Senator from Illinois?

Mr. STERLING. Certainly.

Mr. SHERMAN. Has the Senator considered whether this is not another instance of very numerous overlappings of Government services? There is now, under the meat inspection act of 1906, an army of inspectors going about to various points in the country where meats are prepared for interstate commerce, and here again is another provision for yet another one of the numerous overlapping efforts of the Government. A plate of bacon, I may say to the Senator, has 27 governmental operations on it before he eats it now, and here is another one.

Mr. STERLING. It may be that it will involve some overlapping, and yet I can not help thinking that these are duties that should be performed by the operators, necessary to be performed by them, in order that the public may be fully protected. I think it well enough, too, that the commission may have the authority and the power to get the information provided for.

Mr. STANLEY. Mr. President, will the Senator yield?

Mr. STERLING. I yield.

Mr. STANLEY. The Senator, I understand, is discussing title 5?

Mr. STERLING. We are discussing title 5 of the bill.

Mr. STANLEY. I wish to ask the Senator this question: Title 5 provides that the finding of the commission shall be in all courts prima facie evidence of its truth. It strikes me that that provision, whether so designed or not, furnishes a club which will force other concerns to comply with the provisions governing registrants, no matter what their other reasons might be, since it would necessarily follow that any packer not having this Government guaranty of quality, no matter what might be the quality of his goods, will suffer in markets that do not understand just exactly what that guaranty means.

For instance, under the act providing for the bottling of whiskies in bond the Government simply provided that under certain conditions alcoholic liquors might be bottled in bond by the Government. It did not guarantee the purity or the quality of the whisky at all; it simply provided that they were to be bottled as made within eight years in a warehouse and to contain a certain proof of alcohol. And yet the persons who bottled their liquors in bond immediately asserted in the public press and everywhere else that the Government's blue stamp was a guaranty of the purity of the article.

If the pending bill is enacted, it does not matter what the quality of the goods may be; they may simply come barely within the technical regulations against impurities or decay or diseased condition or adulterations or anything of that sort; and yet if they come within the technical rules of the department, persons having this assurance will be authorized immediately to publish to the world that the Government has guaranteed the quality of the article, and any competitor will be at a hopeless disadvantage unless he has the same alleged guaranty, which is not a guaranty at all.

Mr. STERLING. Further, in line 3, on page 22, the proposition is to strike out provision (b) and in the same line strike out the word "registrant" and substitute "operator" therefor, and so throughout the bill, wherever the word "registrant" occurs, I have substituted the word "operator," and shall offer amendments accordingly.

On page 22 I intend to move to strike out lines 21 to 25, inclusive. I shall move that amendment for the reason that the subject matter of lines 21 to 25, inclusive, is already in the bill or else in the Federal Trade Commission act almost word for word, so far as subdivision (6) is concerned, which begins with line 21.

I shall then move to strike out all of subdivisions (3) and (4), on page 24. I doubt the advisability of retaining those provisions. Subdivision (3), on page 24, provides that it shall be the duty of the commission to—

Cooperate with registrants in procuring for them adequate services by common carriers, by rail or otherwise, including provision for special cars needed in the proper transportation of live stock, live-stock products, or perishable foodstuffs.

I do not believe it is necessary, whether the operators are registered or not, that the Federal Trade Commission or the live-stock commission should be called upon in any way to aid the stockyard men in procuring adequate services by common carriers. I think they are competent to manage the business; they are competent to ascertain what common-carrier facilities are available to them.

Subdivision (4) provides for the furnishing to registrants of—

All available information as to supplies of foodstuffs handled by such registrants and the location and movement and transportation costs of such foodstuffs.

I hardly think it is necessary to go into that in detail or give any commission a supervision of that kind. If a man is competent to manage and operate a stockyard, he ought to know something about the movement and transportation of the various kinds of foodstuffs, as well as the transportation costs of such foodstuffs.

I shall ask the Senate to strike out subdivisions (e) and (f) on pages 24 and 25 of the bill. These refer to certificates to be taken out by registrants. I shall ask to have the Senate add a new section to the bill, and I hope Senators will give their attention to the reading of the proposed new section, because it is for the purpose of adopting the procedure provided for in the Federal Trade Commission act. I am not sure that it is in apt words, but if it is not I shall be glad to have any suggestion a Senator may have to offer.

Mr. McLEAN. Mr. President——

Mr. STERLING. I yield to the Senator from Connecticut.

Mr. McLEAN. I should like to inquire if the Senator proposes to leave in section 14 of the bill?

Mr. STERLING. I do not propose to move to strike out section 14 of the bill.

Mr. McLEAN. The Senator proposes to leave with the Federal Trade Commission the power to fix charges and rates?

Mr. STERLING. We do not do that by section 14. The section as amended reads as follows, reading from the second print of the committee bill:

SEC. 14. No operator shall engage in any unfair or unjustly discriminatory practice or device in commerce, or in any deceptive practice or device to cheat or defraud in commerce, or charge, collect, receive, or demand any unreasonable charge or rate for any service in commerce performed in connection with the business of such operator.

That is the way it reads as in the amended bill, and, so far as I am concerned, that section is left in the bill.

Mr. McLEAN. The copy of the bill which I have contains another clause.

Mr. STERLING. Yes; reading as follows:

The commission may, after hearing, upon complaint or upon its own initiative, determine and fix, and by rule, regulation, or order prescribe, fair and reasonable practices, charges, and rates to be observed by operators, and fair and reasonable terms and conditions upon which the services of operators in commerce shall be rendered or performed.

Mr. McLEAN. That is left in the bill?

Mr. STERLING. That is left in; that is, I do not move to strike it out.

Mr. McLEAN. I am sorry. I regret that the Senator feels inclined to leave that provision in the bill.

Mr. STERLING. I went somewhat upon the theory that if we had the power to create a live-stock commission or give these powers to the Federal Trade Commission, following the analogy of what may be done by the Interstate Commerce Commission in fixing a reasonable rate, this being a public service, a reasonable rate might be fixed by the commission.

Mr. McLEAN. This is a public service because Congress says it is.

Mr. STERLING. I know it is somewhat a mooted question whether it is or not, or whether they are engaged in interstate commerce or not.

Mr. SHERMAN. Mr. President——

The PRESIDING OFFICER. Does the Senator from South Dakota yield to the Senator from Illinois?

Mr. STERLING. I yield.

Mr. SHERMAN. The language which the Senator thinks ought to be stricken out because it is a repetition is the exact language of the act creating the Federal Trade Commission. That is found on page 7 of the published act, providing that no person shall be excused from attending and testifying or from producing documentary evidence, and so forth. The whole of the paragraph is an exact repetition, so I think the Senator's motion is well taken.

Mr. STERLING. If I may read the section which I would add by way of amendment, it is as follows:

That whenever the commission shall have reason to believe that any such packer or operator is engaged in any conduct, business, or practice of the kind herein prohibited or declared unlawful, or has refused or failed to perform any duty herein prescribed, or to comply with any order, rule, or regulation made by said commission in pursuance of the provisions of this act, the commission shall proceed against such packer or operator in the manner prescribed in section 5 of the act entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, for its proceedings against any person, partnership, or corporation which it has reason to believe has been or is using any unfair method of competition in commerce, and all the provisions of said section 5, together with the provisions of sections 6, 7, 8, 9, 10, and 11 of said Federal Trade Commission act, are hereby made applicable to all the proceedings for the enforcement against such packers and operators of the provisions of this act, and for the purposes of such proceedings and enforcement the commission shall have all the powers and duties prescribed in sections 5, 6, 7, 8, 9, 10, and 11, as aforesaid, and all the penalties for the violation of the provisions of said act and of any orders, rules, or regulations made thereunder, are hereby made applicable to the violations of any of the provisions of this act and of any orders, rules, or regulations made thereunder.

I think that covers it. It is virtually an enactment of the provisions of the Federal Trade Commission act, so far as this proposed section is concerned. It adopts these six sections of the Trade Commission act for the purposes of the pending bill.

The proposed substitute recognizes the prohibitions contained in the original bill. What are they? I believe in those prohibitions.

First, it is provided that—

It shall be unlawful for any packer to engage in any unfair or unjustly discriminatory practice or device in commerce.

I will say, in passing, that it is my purpose to move to strike out a few of the words of the same subdivision as found in the original bill, believing them unnecessary or really repetition of the same idea contained in the words I have just read. Then it is provided:

(b) Sell or otherwise transfer to or for any other packer, or buy or otherwise receive from or for any other packer, any live stock or live-stock products for the purpose of apportioning the supply between any such packers, or unreasonably affecting the price of or creating a monopoly in the acquisition of buying, selling, or dealing in live stock or live-stock products in commerce; or—

I can not help but think that is a reasonable provision. The several packers and packing institutions ought each to be permitted to stand on their own bottoms; there is no necessity for their combining together or parceling out the purchases of live stock that they shall severally make throughout this great country. Of course, if that should unreasonably affect the price or really create "a monopoly in the acquisition of buying, selling, or dealing in live stock or live-stock products in commerce," it ought to be prohibited.

Mr. STANLEY. Mr. President——

Mr. STERLING. I yield to the Senator from Kentucky.

Mr. STANLEY. Does the Senator hold that the acts to which he now calls the attention of the Senate are not already prohibited by existing law? It strikes me that the acts prohibited by the provisions referred to are already plainly in violation of the law and that in either event recourse must be had to the courts to enforce the law.

Mr. STERLING. I am not so sure about that, I will say to the Senator from Kentucky. Indeed, I think there are provisions in the very subdivision which I have read that are, at least, not clearly covered by existing law, such as the Sherman Antitrust Act.

Mr. McLEAN. Mr. President, if that is so, would it not be wiser to amend the original act which created the Federal Trade Commission and in that act extend the powers of the Federal Trade Commission so that the commission may investigate and regulate not only this industry but all other industries, and in that way avoid the multiplication of laws?

Mr. STERLING. There is some reason in the suggestion of the Senator from Connecticut.

Mr. STANLEY. Mr. President——

The PRESIDING OFFICER (Mr. PAGE in the chair). Does the Senator from South Dakota yield to the Senator from Kentucky?

Mr. STERLING. I yield.

Mr. STANLEY. I do not wish to delay the Senator, but I will say that if it be true that the simple devices which have been mentioned, which are plainly naked provisions for limiting the output or for restricting production or for fixing prices, are not already prohibited by the Sherman Act and amendments to the Sherman Act and amendments to the transportation act, our commerce is open to the most flagrant violations of the antitrust law. If those acts can be committed under existing law, our antitrust laws are worthless, they are impotent, and we should enact amendments to the antitrust laws that will not only reach the packers but will reach every other concern which is engaged in naked combinations for the purpose of monopolizing an important business.

Mr. STERLING. The one object of the original bill, as well as of the substitute, is to confer upon a commission, whether it be a live-stock commission or the Federal Trade Commission, power itself to take cognizance of such acts and to issue the necessary orders, if it finds a violation of the provisions, to cease and desist therefrom.

Now, another subdivision or prohibition is to—

(c) Engage or participate in any manner, either directly or indirectly, in the business of purchasing, manufacturing, storing, or selling foodstuffs other than live-stock products—

When? Not absolutely and standing alone, but—

where the effect of such participation in such business may be substantially to lessen competition in or to restrain commerce or to tend to create a monopoly in commerce.

Mr. STANLEY. One other question, Mr. President.

Mr. STERLING. I yield.

Mr. STANLEY. With a full realization of the profound knowledge of the subject evidenced by the Senator from South Dakota, I should like to ask him this question as a lawyer: If it be true that the palpable, old-time, well-known devices for evading the laws against monopolies and restraints of trade are not punishable, and we make certain of these devices offenses if employed by persons engaged in the packing and transportation of meat when such harmful acts are not prohibited to merchants generally, is the Senator of the opinion that an act of that kind would stand; that we can penalize wrongful acts if committed by a particular business, leaving merchants and manufacturers generally free to employ such devices?

Mr. STERLING. The Senator from Kentucky suggests a very important and somewhat difficult question. It is not always easy to discriminate between businesses. One apparently and obviously is a public service, and in that case I think restrictions may be made that are not made in regard to what is admittedly a strictly private business. The former is charged with a public interest.

Mr. KENYON. Is not the distinction this: We are not trying to regulate business, but we are trying to regulate monopoly? That is the one object, of course—to keep the channels of commerce open and free from monopoly. If any business becomes charged with a public use and in interstate commerce is obstructing the free channels of commerce, we regulate the monopoly. It may affect business, but we are not regulating the business.

Mr. STANLEY. That is the essential vice of this proposed legislation and of all legislation akin to it.

We are attempting to regulate an illegal thing. Monopoly should not be regulated; it should be prohibited. It is morally as vicious to regulate murder or arson or larceny as it is industrially to regulate monopoly. If men attempt to interfere with the free and unobstructed movement of commerce between the States which should obey the law of supply and demand exactly as the movement of water toward the sea obeys the law of gravity, any interference is wrong and should be prohibited.

The status of business does not change and can not change by reason of a violation of the law. If a business is a private business and is legally conducted, it is a private business though it be illegally conducted. It does not become a public utility; it does not become an instrumentality of interstate commerce.

The power of the commerce clause of the Constitution can not be extended to cover a man who is engaged in an illegal business when it would not reach him if he were engaged in a legal business. If his business is interstate and he violates the law, Congress can reach him. If he is not in interstate commerce, Congress can not reach him. The fact of its being a monopoly does not make a business a public utility, nor does the fact that it is a monopoly enlarge the power of Congress over it. If it is a monopoly in a State, State laws must reach it, and if it is engaged in interstate commerce it does not have to become a monopoly. The moment it interferes unreasonably with the course of commerce it is guilty of a violation of law.

Now, take the case of the packers. If the packers are pooling their purchases they are guilty of the same crime of which the carriers were guilty in pooling their shipments, a practice which has been severely inhibited by the law. If coal dealers, as it is said they have been doing, employ a selling agency and through the selling agency attempt to fix prices, they are within the provisions of the law. I have not the time to recall the innumerable devices which have been resorted to by persons attempting to fix prices and to restrain trade; but it does not matter what the device is, for, as Justice Harlan in the tobacco case and in the Standard Oil case has made perfectly plain, the moment any restraint of trade is manifest under existing law those guilty of such restraint are subject to punishment.

If the interpretation of the law and the wording of the law is so inefficient that such acts can be committed by the packers or by anybody else, I maintain that the antitrust laws are futile and should be amended. If, on the other hand, the acts are cognizable by existing law, then there is no use of reiterating existing law in this bill, because it is necessary to go to the courts to enforce it in any event.

Mr. KENYON. Of course, it is all dependent upon the rule of reason.

Mr. STERLING. Mr. President, I hope I shall not be interrupted further, because I must recognize the right and the desire of other Senators to speak briefly, and the time will soon be here when we shall be required to proceed under the five-minute rule.

Just a word in reply to what has been suggested by the Senator from Kentucky. The object of creating a commission such as the proposed live-stock commission or the Federal Trade Commission, I assume, is that in case of wrongdoing there is an opportunity to make complaint and to institute investigation and to have a speedy hearing as to whether or not there has been a violation of the law. Then, if anybody complains, either the Government or an individual or a corporation, it is a matter for the courts to determine.

The other provisions contained in the bill, so far as they relate to the packers, are retained in the substitute. I regard them as wholesome and desirable.

I merely wish now to call attention briefly to the Federal Trade Commission as an instrumentality that ought to be charged with the enforcement of the proposed law rather than a new and expensive commission, to be called the live-stock commission. A word as to what the Federal Trade Commission has already done. It has proceeded along lines that give it the experience necessary to handle the work with which it will be charged in case the Federal Trade Commission is substituted for the live-stock commission in the pending bill. I call attention to the report of the Federal Trade Commission for this year. On page 38 is a summary of the reports that have already been made by the Federal Trade Commission as they pertain to the packing industry. First, they have issued part 1, which relates to the "Extent and growth of power of the five packers in meat and other industries." Then they have issued—

Part 2. Evidence of combination among packers.
Part 3. Methods of the five packers in controlling the meat-packing industry.
Part 4. The five larger packers in produce and grocery foods.
Part 5. Profits of the packers.
Part 6. Cost of growing beef animals; Cost of fattening cattle; Cost of marketing live stock.

It will be seen, therefore, from these reports that they have made they have already investigated subjects akin to the subjects that any live-stock commission would be required to investigate under the pending bill, and they have had the advantage of the experience already gained.

I wish to call attention, Mr. President, briefly to what they say in this report in regard to the procedure of the commission. They say:

Section 5 of the Federal Trade Commission act lays down a single principle of law. It is, "Unfair methods of competition in commerce are hereby declared unlawful." The rest of the commission's organic act is procedural, being simply a clear method of procedure laid down by the Congress.

By the terms of this bill, Mr. President, there is perhaps more than one single principle of law laid down; there are five different prohibitions, and it will be the business of the Federal Trade Commission to investigate and see whether any of those prohibitions have been violated or not. They further say:

In administering this law the Federal Trade Commission follows scrupulously a procedure carefully laid down by the Congress. When anyone believes that unfair practices are being used to his injury and he addresses the Federal Trade Commission with a brief statement of the facts as he understands them, the commission makes a preliminary

investigation, and if, in the end, it has reason to believe that it is to the interest of the public that the matter be formally inquired into, then it issues its complaint in writing, directed to the concern against whom the citation has been made. This issuance of the complaint is no judgment of condemnation, but a resolution for an orderly trial of the matter.

They would follow exactly the same course of procedure in the case of a complaint made against the packers or any of them.

Mr. President, no complaint is made in this report of theirs anywhere, so far as I have been able to find, that the procedure authorized by the Federal Trade Commission act is not sufficient, is not comprehensive enough, to reach all cases of violation of the law.

It has been suggested—and I heard that suggestion made the other day—that this commission, because of the location of the principal packers, the five great packers, ought to be located in Chicago. The Federal Trade Commission has, I think, under the law, its principal office here in the District of Columbia; but it has offices elsewhere, and I call attention to what is said in regard to that:

The commission has three branch offices, established in June, 1918, for the purpose of saving time and expense in travel, and also to afford business men a better opportunity of presenting the matters they wish considered. Convenient and well-equipped quarters are maintained at No. 20 West Thirty-eighth Street, New York City; No. 14 West Washington Street, Chicago; and at room 65, Appraisers' Stores Building, San Francisco. These branches have accomplished the objects in view, besides providing convenient hearing rooms and quarters for the commission's work in the cities named and their vicinities.

And so here, Mr. President, you have under my proposed substitute a commission of five, instead of a commission of three, to investigate the subject matter involved in this bill—a commission of five, with offices already established at Chicago, and conveniently equipped.

It has been suggested in this same connection that the commission ought to be there, as though the commissioners individually would themselves inspect these various industries. I think nothing can be farther from the real facts as they will develop if this bill is passed than that the commissioners will personally and individually make these inspections. They will be made by experts, by inspectors especially qualified for that purpose. They will be made, so far as books and documentary evidence are concerned, by certified accountants.

In that connection, I might call attention to the report or letter from the Federal Trade Commission in response to Senate resolution of September 3, 1919, submitting a report of the results of a special investigation of the reasonableness of the maximum-profit limitations fixed on the meat-packing industry by the Food Administration. Here are three different subjects, at least, covered in this report. Did the members of the Federal Trade Commission, singly or collectively, make the investigation? No; but the exhibits are signed, each and every one of them, by those persons specially designated by the commission for the purpose of making these investigations.

As I said the other day, of course the commission will declare its policies; it will establish its rules and regulations, in pursuance of the laws we enact; and thereafter, for all inspection work and expert work, the proper persons will be employed.

Mr. President, as I think of this subject, I can conceive of no earthly reason for the establishment of a new and expensive commission. It is so easy to show that the Federal Trade Commission has had altogether, up to date, the necessary experience to carry on this work. If it be objected that the Federal Trade Commission has made some reports that are not sustained by the facts, let it be the answer to that, in part at least, that when charged with this responsibility relative to the packing industry they will hesitate before they make a report that they can not conclusively show is sustained by the facts; for they will know that any inquiry into the business of the packers, or any of them, any order made against them to cease and desist from any practices prohibited by this bill will be subject to review by the courts, and hence, under that feeling of responsibility, I think we may feel assured that their decisions will be well guarded and will not be decisions that will deprive any person or any corporation of any fundamental right.

I sincerely hope that Senators will seriously consider the substitute, or the amendments, as I come to offer them, that will take the place of the substitute which I have prepared.

Mr. GRONNA. Mr. President, I can not in the brief time remaining for general debate upon this bill present in an intelligent way the history of this legislation. Under the unanimous-consent agreement general debate closes at 2 o'clock, and I can, therefore, occupy only a very brief period of time; but I can remember, when I was a Member of the other body, that the same fight and the same complaints were made by the same people and the same interests when the meat-inspection bill was proposed. That legislation was pending in the House of Representatives and in this body for years; and it was contended then and argued then, as it is now, that it was not only going to hamper but destroy the great packing industry.

Mr. President, no one who is at all familiar with the packing industry will deny that the meat-inspection law was a benefit, not only to the public but to those engaged in the great meat industry. We appropriate every year more than $3,000,000 for the inspection of animals at the different markets throughout the United States, and what has been the result of that work, done by officials of the Government of the United States?

The result has been that the stamp of the Government has become a certificate showing absolutely that the articles of food inspected are such as may enter into interstate commerce, and may be shipped to foreign countries, and they are given preference in competition with the same articles of food exported to foreign countries without this certificate. So that instead of hampering the business of the packers it has aided the business of the packers; and I do not think the packers will deny that the industry has been benefited; that their business has increased; and that the profits of the packers have increased.

Mr. President, all that is proposed in this bill is that a Government agency shall be established to assist, in this great business, in the supervision and in the inspection of this necessary article of food. This is not a new question. It has been before Congress ever since I came here, and the people will never be satisfied until some remedial legislation is passed; and we can not ignore the petitions of the thousands of people who every day are writing us with reference to this important legislation.

I desire to call attention to the fact that only in the last two or three days I have received many hundreds of letters and a great number of telegrams from people throughout the Nation. This correspondence comes from people who seem to understand what this legislation means. They are not asking for the passage of this bill simply because it is a measure to control the five great packers. They seem to understand that there is a necessity for legislation which will, to some extent, permit Federal officers to supervise and to help regulate this business. Many of these letters come from college professors and from attorneys. Many of them come from business men and professional men as well as from farmers. I doubt if there is a State in the Union from which I have not received either telegrams or letters favoring this legislation and specifically favoring the committee bill as reported to this body. I have no pride of opinion on this particular bill because it bears my name or because it was reported to the Senate by me as chairman of the Committee on Agriculture and Forestry, and I am not contending that there are not some good provisions in the substitute offered by the Senator from South Dakota [Mr. STERLING], but that substitute was printed and was on the desks of Senators only on Saturday. I had not, on Saturday, had an opportunity to make a comparison; and I want to acknowledge now that I was mistaken in stating that the substitute bill offered by the Senator from South Dakota does not provide for a uniform system of accounting. During the limited time available I have tried to compare the two bills. There is considerable difference between the provisions of the substitute offered by the Senator from South Dakota and the provisions of the committee bill.

Mr. POMERENE. Mr. President, before the Senator goes into that, will he object if I ask him a question?

Mr. GRONNA. Not at all.

Mr. POMERENE. A moment ago the Senator referred to the provision for a uniform system of accounting. I am in sympathy with that provision; but I have heard the objection made that it is impossible to have a uniform system of accounting, and so forth. I wondered if there was any evidence on that subject before the committee, and, if so, does the Senator see any objection to that provision in the bill?

Mr. GRONNA. I will say to the Senator very frankly that I think it is absolutely necessary to have a uniform system of accounting, and I will state further that no evidence was presented to the committee that would warrant the statement that it is impossible to have a uniform system of accounting. If I had the time, I would like to read from the testimony of Mr. Armour himself, a man who has grown up in the business, and one of the largest operators in the packing industry.

Even Mr. Armour, familiar as he undoubtedly is with the affairs of this business, seemed to be unable to tell the committee all the transactions, and not even the profits of his establishments. I am sure that it can not work to the detriment of the operators, but it will be a benefit, and, of course, it will lessen the work of the Federal officers who make the inspections or the investigations.

Mr. STANLEY. Mr. President——

The VICE PRESIDENT. Does the Senator yield to the Senator from Kentucky?

Mr. GRONNA. In just a moment. I was one of those who favored turning over this tremendous task to the Federal Trade Commission, but I became convinced that it would be absolutely impossible for the Federal Trade Commission, or any similar commission having the amount of work to do that it has, to perform the duties which will be incumbent upon this commission. I am sure that this Federal live-stock commission will require all the time of three or five men to perform the work and they will not be able to do it alone. This commission will need the cooperation of the Federal Trade Commission.

Now, I yield to the Senator from Kentucky.

Mr. STANLEY. The powers exercised by the Federal Government over the packers in the way of meat inspection are predicated upon the idea that the meat will go into the channels of interstate commerce. The bookkeeping does not go into the channels of interstate commerce.

Mr. GRONNA. Neither does the bookkeeping, with regard to the marking and the checking up of the parts of animals which are inspected by the officers of the Federal Government go into the channels of interstate commerce.

Mr. POMERENE. Mr. President, if the Senator from North Dakota will yield, the Interstate Commerce Commission requires, under authority conferred upon it by Congress, a uniform system of bookkeeping with respect to transportation over railroads, and if we are to adopt a system of regulation for these stockyards and packing houses, I do not understand why it should not be applicable to them.

Mr. GRONNA. I agree with the Senator.

Mr. POMERENE. It is certainly an incident to the business.

Mr. STANLEY. Exactly. I do not wish to take up too much time, because it is limited; but, as I said on Saturday, if we move upon the assumption that the packers shall continue to control the stockyards they are controlling an instrumentality of interstate commerce, in all probability terminal facilities, and, having taken jurisdiction of this branch of the business, it may well extend to all other branches. But, assuming that they have surrendered control of these terminal facilities and are not in the movement of commodities at all, they are not carriers to any extent. They are simply packing, curing, and selling meats within a State. They are utilizing these instrumentalities, but they are not operating them. In that event, I very much doubt whether Congress can prescribe a method to the butcher by which he shall ascertain his profits and regulate his business, any more than it could with respect to a man who was mining coal and shipping it.

If it can do that, then Congress can take possession of the bookkeeping of every merchant who ships a yard of cloth across a State line.

Mr. GRONNA. Mr. President, I have not the time to meet the argument of the able Senator from Kentucky with reference to the constitutionality of this bill, nor do I assume that I could do so if I had the time; but if the Senator will refer to a chart prepared by the Federal Trade Commission and included in the summary of their report he will become convinced, as I have, that these men are not butchers simply doing a local butchering business. In this chart we find that Wilson, Armour, Swift, Morris, and Cudahy are doing a large share of the business, not as a local institution, not business which is intrastate, but business which is interstate; and when we look at this chart and see how the interests of these five packers are intermingled with service companies, with land-development companies, with stockyard companies, with cattle-loan companies, with rendering companies, with cotton-oil companies, with publications, with terminal railroads and facilities at stockyards, with banks; how they are engaged and interested in the business of manufacture of packers' machinery and supplies, in cold storage and warehousing, and in railroads, we must be convinced, as I am convinced, that the bulk of the business transacted by these five big packers is a business in interstate commerce, and that the Congress of the United States not only has the right but it is the duty of the Congress of the United States to regulate them.

Mr. President, I have listened to the speeches of able Senators for some days, discussing the rights of the men engaged in the packing industry; one would think that these five big packers have been very drastically dealt with, and that they need the sympathy of the country. If Senators will refer to the testimony before the Committees on Agriculture in the House and in the Senate, and take the statements of Mr. Armour, Mr. Swift, and the other packers they will soon be convinced that the packers have made a most wonderful progress and have been allowed to make enormous profits.

The business of Swift commenced not so very long ago with a small capital, some $60,000, I believe. It has grown, and I am glad that it has, ever since that company was organized; and every year since the incorporation of Swift & Co. large dividends have been paid to the stockholders. The capitalization of this corporation now is $150,000,000. I say every year they have made large profits, and even during the war the profits of these packers were enormously large.

In 1917 Swift & Co. made more than $44,000,000 profit. This corporation made a net profit, after all expenses, including taxes, had been deduced, of more than $34,000,000, and in 1918 they made $21,000,000 net, so that I can not see any good reason why these people should complain if the Federal Government again undertakes to assist them in this great business, because we have the absolute proof that instead of restricting any of the packers from making large profits these five concerns during the war were permitted to make most liberal and exceedingly large profits.

I say without hesitation that if we are to let these packers go on without some supervision and regulation, that the five packers will be more powerful, and I believe that to-day they are stronger and more powerful than the Government itself.

The Senator from Kentucky [Mr. STANLEY] argued the constitutionality of this bill on Saturday. I call his attention to a statement made by the present Attorney General, Mr. Palmer, which will be found beginning on page 47 of the hearings entitled "Stimulation of live-stock products." I want the attention of the Senator from Kentucky while I read just a small portion of a statement made by Mr. Palmer, the Attorney General. It has been stated that these corporations are not engaged in the retail business. The Attorney General states that they have engaged in the retail business.

Mr. STANLEY. Mr. President, the Senator from Kentucky made no statement as to their being engaged in the retail business. I did not discuss that phase of it.

Mr. GRONNA. No; not as to their being engaged in the retail business. I realize that. But the statement has been made by other Senators.

Mr. STANLEY. It has been made. I discussed the legal phase of the question, not the conduct of the business.

Mr. GRONNA. I understand that. I want to read a portion of the testimony of the Attorney General:

> The CHAIRMAN. Of course, they have never been accused of being in the retail business, as far as I know.
>
> The ATTORNEY GENERAL. Yes; they have. They have been accused of engaging in it, and they have been accused of having designs upon it. There is a great deal of evidence of the unfair manner in which they had used that competition, and the tendency to destroy competition as a result of it.

The Senator from Kentucky referred to the fact that if these packers should violate the provisions of this bill they would also violate the provisions of the Sherman antitrust law. Mr. President, there is no doubt that they have violated the provisions of the Sherman antitrust law, and the Attorney General admits it.

Mr. STANLEY. Mr. President, the Senator from Kentucky did not state that they had not violated the provisions of the antitrust law. He stated that if they were guilty of any of the offenses charged, they had violated it.

Mr. GRONNA. The Senator from Kentucky knows better than I the difficulty of getting at these violators of the law. As a layman, I certainly do not wish to criticize the court, but under the liberal construction placed upon the Sherman antitrust law by the Supreme Court, applying the rule of reason, it is exceedingly difficult to convict those who are guilty of such violation and to penalize them, as is set forth here in the statement of the Attorney General, and I ask to have printed in connection with my remarks the statement of the Attorney General bearing upon this question:

> The CHAIRMAN. Of course, they have never been accused of being in the retail business, as far as I know.
>
> The ATTORNEY GENERAL. Yes; they have. They have been accused of engaging in it and they have been accused of having designs upon it. There is a great deal of evidence of the unfair manner in which they had used that competition, and the tendency to destroy competition as a result of it.
>
> Senator HARRISON. Can they rent space in their refrigerator cars to wholesale merchants for distribution?
>
> The ATTORNEY GENERAL. They can not. They can not use their distributing system or permit anybody else to use it in any form whatever for the purpose of distributing any of these side lines, and, Senator, neither can they devise any other scheme or arrangement which has the same purpose or effect.
>
> The CHAIRMAN. Having prohibited these corporations from doing these unfair and related practices, what is the necessity for, or what would you recommend as further legislation with respect to this matter?
>
> The ATTORNEY GENERAL. I do not recommend any further legislation.
>
> Senator KENYON. It was not intended that this should have anything to do with legislation or stop legislation?
>
> The ATTORNEY GENERAL. No; I have made no agreement with them about legislation. I would not deliver the Congress to anybody.

Senator SMITH of Georgia. You have gotten a decree for what the present law authorizes the Government to obtain in protection of public rights?

The ATTORNEY GENERAL. That is right, Senator.

Senator SMITH of Georgia. And you have gained your lawsuit for everything that the Sherman antitrust law authorized you to gain it.

The ATTORNEY GENERAL. I was attending strictly to my own business. I think you have stated it correctly when you say I have "won this case." I have gotten a judgment which, to my mind, is all that the Government can hope to get, and I have left the case in such shape that if anything has been overlooked we have got a splendid remedy in this particular court.

I have made no agreement with these gentlemen of any kind or character with respect to legislation, of course. I would not think of doing such a thing. But I have made no suggestion as to what my position would even be with respect to legislation, and I have made no agreement or arrangement or suggestion with anybody as to what the future course of the Government is going to be with respect to litigation. I could go into court to-morrow against these people if I desired to do so.

Senator MCNARY. Gen. Palmer, I think you have brought great good to the American people by the decree. You have given the matter very great study. At this time can you say to the committee, as giving your best opinion, that any further legislation upon the statute would bring greater and better relief to the American public and the American consumer?

The ATTORNEY GENERAL. Senator, I hesitate to make any recommendation of that sort. My personal view is that I would like to see this tried out. I believe this is a great, long step forward. I believe we have gotten things that we have been fighting for for years, apparently without hope of getting. I think it will do great good. I do not promise it is going to mean immediate lowering of prices. There is great strength in the argument of an efficient, big concern, resulting in lower prices to the consumer, but it is the argument of the efficiency of autocracy. At any rate, what we have done, if we destroyed that efficiency, which might result in lower prices, we have destroyed autocracy and returned to the freedom of our democratic kind of government for business. We have made it possible for men of all kinds, in all classes to get into these businesses, and if that does not result in benefit to the American people, then our whole theory of competition is wrong.

Senator NORRIS. In your examination of the evidence that was submitted to you by the Federal Trade Commission and other evidence which you examined, did you reach the conclusion, as a lawyer, that the packers or any of them had violated the criminal statute or were criminally liable?

The ATTORNEY GENERAL. I think they had violated the Sherman antitrust law; that is both a criminal and a civil statute, Senator.

Senator NORRIS. Under your settlement, while you have made no agreement, of course, you do not expect to proceed against them criminally for that violation, do you?

The ATTORNEY GENERAL. This is the first time I have ever announced it, but I do not expect to proceed against them criminally.

Senator NORRIS. So that in this agreed decree there is, as far as the Department of Justice is concerned, at least a tendency to forgive any criminal offense they may have committed?

The ATTORNEY GENERAL. Oh, no; we forgive nothing in the Department of Justice.

Senator NORRIS. If you do not prosecute them it has that effect, does it not?

Senator SMITH of Georgia. But the grand juries of the country have the right to prosecute and institute prosecutions?

Senator NORRIS. Yes; but they do not do it unless there is a prosecuting attorney somewhere to bring it out.

The ATTORNEY GENERAL. I say very frankly—I do not want you to mistake my conclusions—I have never said a word about criminal prosecution, but having forced them into the position where they have agreed to go as far as that in meeting the Government's position, I would think I was doing a very improper thing to attempt to convict the individuals in a criminal court, and I would be moved to that consideration a good deal by the practical difficulties in the way of getting convictions.

Mr. STANLEY. Mr. President, will the Senator yield for a question?

Mr. GRONNA. My time is about up.

Mr. STANLEY. I simply want to say that you are bound to appeal to the courts to enforce the act anyway.

Mr. GRONNA. That is true, but this bill makes it clear what the packers are permitted to do and also what becomes illegal, or what they are prohibited from doing.

Mr. President, my time is about up, and I ask permission to incorporate in my remarks a letter from Florence Kelley, general secretary of the National Consumers' League, and also portions of a pamphlet entitled "The Food Problem and Federal Legislation," by Mrs. Edward P. Costigan. Mrs. Costigan is a member of the National Consumers' League.

JANUARY 20, 1921.

Hon. ASLE J. GRONNA,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR GRONNA: The monopolistic control, or even the possibility of such control, of the food supply of 105,000,000 people by private business enterprise is intolerable. The National Consumers' League, with full knowleige of the facts, adopted as part of its 10-year program a proposal for the Federal regulation of the meat-packing industry.

In the name of its thousands of members, its 59 affiliated leagues in 17 States and the District of Columbia, for whom it speaks directly, and the consumer, we most respectfully urge you to vote next Monday, January 24, or whenever the bill comes to a vote, for the Gronna bill.

No more important public issue than the Federal protection of the people's interest in food and meats can be imagined.

Sincerely, yours,

FLORENCE KELLEY,
General Secretary National Consumers' League.

THE FOOD PROBLEM AND FEDERAL LEGISLATION—UNDERNOURISHMENT, SPECULATION, MONOPOLY, AND THE HIGH COST OF LIVING.

In our country to-day, the National Children's Bureau tells us, from 3,000 000 to 6,000,000 children are underfed. One child in every five in the United States is not getting enough to eat. The situation has become desperate. We have seen swollen profits on the one hand and empty plates on the other. The query has been increasingly insistent, Why have prices continued so high? The answer has been coming back in no uncertain terms, because, in addition to the consequences of world underproduction and inflated currency, speculators, monopolists, hoarders, and profiteers are gambling with the food supply of the Nation and the world.

Political economists frequently assure us that people are protected by the law of supply and demand; that with ample supplies public demand can either raise or lower prices at will by using or withholding its purchasing power. We are learning, however, that a new era is upon us. For the time being an ecopomic absurdity rules the world. Reckless men are even killing the goose that lays the golden eggs. Monopoly is throttling competition and dictating the price list. The consumer is being consumed.

Farmers also are in distress. Undoubtedly only a small portion of the price paid by the consumer accrues to the producer, whose incessant toil is given inadequate reward because the way between the producer and consumer is artificially blocked. Decreased production is bound to be the inevitable result.

FEDERAL INVESTIGATIONS AND REPORTS.

In 1917 the President of the United States instructed the Federal Trade Commission to "investigate and report facts relating to the production, ownership, manufacture, storage, and distribution of foodstuffs," and "to ascertain the facts bearing on alleged violations of the antitrust acts, and particularly upon the question whether there are manipulations, controls, trusts, combinations, conspiracies, or restraints of trade out of harmony with the law or the public interest."

An exhaustive and intensive investigation resulted, and the facts brought out were surprising in the extreme.

FOOD CONTROL BY "THE FIVE PACKERS."

The report of the commission states that five corporations—Armour & Co., Swift & Co., Morris & Co., Wilson & Co., and the Cudahy Packing Co., known as "the packers"—not only have a monopolistic control over the American meat industry but have secured control similar in purpose, if not yet in extent, over the principal substitutes for meat, such as eggs, cheese, and vegetable-oil products, and are rapidly extending their power to cover fish and nearly every kind of foodstuff. According to the Federal Trade Commission, the "Big Five," in addition to meat, "sold in 1916, through their branch houses alone, nearly 100,000,000 pounds of poultry, 90,000,000 pounds of butter, 75,000,000 pounds of cheese, and over 135,000,000 dozen eggs." The packers are also important factors in breakfast foods, condensed milk, and canned fruits and vegetables. The canned goods business is now about $16,000,000 a year. Recently they have extended their operations to include various staple groceries and vegetables, such as rice, potatoes, beans, and coffee. The Trade Commission reports: "Here, again, the immense selling organization of the packers, built up in connection with their meat business, assures them almost certain supremacy in any line of food handling which they may wish to enter. Armour's drive into the rice market in a single year is perhaps the most striking instance of the potentialities in this direction. Early in 1917 Armour & Co. first undertook the handling of rice, and in that one year sold more than 16,000,000 pounds of rice, thus becoming at a single move, on the statement of the vice president of the company, 'the greatest rice merchant in the world.'"

During this period the wholesale price of rice increased 65 per cent. At the present rate it is estimated that the wholesale grocer business will disappear in five or six years. Incidentally, the commission mentions monopolistic dominance in sales of leather and wool, necessary for the production of shoes and clothes, resulting in unprecedented profits to the packers. The "Big Five" handle more than three-fourths of the hides, and tan a large part of the leather in the United States. They deal in hundreds of commodities unrelated to the meat-packing industry.

The commission states: "In 1917, the 'Big Five's' combined sales of meats and all other commodities totaled $2,127,245,000; in 1918, they were over $3,000,000,000." The report adds: "At the present rate of expansion, within a few years the big packers would control the wholesale distribution of the Nation's food supply."

SOURCES OF CONTROL.

The Federal Trade Commission further charges that these conditions were originally made possible through combinations, rebates, and special privileges of the packers. It is stated that they have resulted from the ownership of:

"Stockyards, with their collateral institutions, such as terminal roads, cattle loan banks, and market papers."—The packers own a controlling interest in nearly every chief stockyard company in the United States.

"Private refrigerator car lines for the transportation of all kinds of perishable foods."—Ninety-three per cent of meat refrigerator cars and 50 per cent of the other refrigerator cars are owned by the same group.

"Cold storage plants for the preservation of perishable foods."

"Branch-house system of wholesale distribution."—The packers operate over 1,000 branch houses and about 1,300 peddler car routes.

"Banks and real estate."—The packers are interested in scores of the larger banks in 15 cities from Boston to San Francisco.

The Federal Trade Commission's report recites that the result of this control has been forcing down the prices paid to producers at one end and a rise in cost to consumers at the other. The packers can manipulate markets and dispose of their products without regard to supply and demand.

We learn that in 1917, a war year of patriotism, sacrifice, and suffering, though the sales of the packers had barely doubled, their profits were four times as great as in an average year prior to the war.

CONCLUSION DRAWN BY FEDERAL INVESTIGATORS.

One conclusion reached by the Federal Trade Commission has been widely approved. It is generally agreed that the control by a few private individuals of the food supply of 100,000,000 people is a power altogether too great to be allowed to continue without governmental regulation and supervision.

SUGGESTED FEDERAL LEGISLATION.

Many interested and important organizations have joined in urging corrective legislation affecting the meat-packing industry. Among them may be mentioned:

The American Live Stock Association, whose activities inaugurated the Federal Trade Commission's investigation; the National Grange; the Farmers' National Council; the National Board of Farm Organizations; the American Federation of Labor; the Wholesale Grocers' Association; the National Consumers' League; the Women's Trade Union League; and the National League of Women Voters.

As a result of many conferences and much discussion, two bills were introduced in the Senate—the Kendrick bill and the Kenyon bill, the latter being also introduced in the House of Representatives by Representative ANDERSON. The Kenyon-Anderson bill provided for a licensing system under the Department of Agriculture, designed to accomplish the following results:

"1. To remove the stockyards from the control of packers.

"2. To limit the packers' control over other industries producing unrelated food products.

LOCAL FOOD CENTERS AND WAREHOUSES.

Of great interest to the consumers is the provision in the Gronna bill for Federal authorization and encouragement of local efforts to establish food warehouses and retail distributing centers. This would assure small producers, municipal groups, and cooperatives better opportunities to do business than now exist under the packers' control, and would materially aid in the elimination of unnecessary middlemen.

Mr. GRONNA. Mr. President, much has been said with reference to the damage done to these corporations in foreign countries by the Federal Trade Commission. I have here a newspaper article which I clipped from this morning's Washington Post, entitled "Say New Zealand Barred Armours."

Mr. President, if I can read the English language correctly, this article does not say that they were barred from shipping meat into that country, but they were denied the right to export meat products from New Zealand.

So far as the farmers are concerned, they might well take exception to the methods of doing business by the packers. The packers claim to be the friends of the farmers, but if anyone will take the time to make the investigation it will be found that the packers are not as much concerned about the welfare of the farmer as they claim to be. If you will make the investigation, you will find that to-day the warehouses of the packers are filled with frozen mutton and frozen lamb imported from Australia, from Argentina, and other foreign countries. If the packers have the welfare of the American farmers at heart, as they claim, why do they not buy in the United States? We all know that they can take an American dollar and go to foreign countries and buy much more cheaply on account of the difference in exchange. We know what the reasons are. It is not for the purpose of benefiting the American farmer, and that has been the burden of the testimony of the five great packers all through the hearings, that this bill will injure the stock raiser and the farmer generally. Yet to-day there is no market for American mutton or for American lambs simply because these packers, the great friends of the farmer, have gone to foreign lands and shipped in large quantities, great cargoes, and filled the cold-storage warehouses of the country with frozen mutton and frozen lamb.

What more do they ask? They ask that these products be exempt from the provisions of the cold-storage bill—this bill is still in conference, and it has been in conference since the last session of Congress—they ask that we do not include frozen meats. They do not want frozen meats to be included in the cold-storage bill because meats are imported into this country by the packers in a frozen condition. The packers have discriminated against the American cattle grower; they have fleeced the American cattle grower and the American farmer, and now they want to continue their profiteering and fleece the consuming public on mutton and lamb, on the sale of a product which they have bought in foreign countries with American money worth 100 cents, commanding a large premium in exchange for foreign money. So much for the interest of the packers in the American producer.

I have here a pamphlet dated December 15, 1920, issued by the Irving National Bank, showing that the pound sterling was worth in November $3.46. The high point was $3.53, low $3.44½, and on December 14 $3.46¼. That makes quite a difference and gives an advantage to the packers. They take a dollar worth 100 cents and go to these foreign countries and buy with money which is at a premium all the way from 25 to 30 per cent. It makes the product that much cheaper to the packers.

I ask unanimous consent to have printed in connection with my remarks certain statements made by Mr. Armour and Mr. Swift affecting prices and profits, and also a statement of Mr. Chase, a certified public accountant.

The VICE PRESIDENT. Without objection permission is granted.

Mr. GRONNA. I hope that the friends of the measure will take into consideration the fact that for several years this question has been debated; that the Committee on Agriculture and Forestry, having the assistance of the Senator from Iowa [Mr. KENYON] and other good lawyers, has for months been working on the committee bill. At no time, I will say, have the members of the committee tried to be unfair with those who are engaged in the packing industry. We have at all times tried to be fair with them. I could cite instances if I had the time——

The VICE PRESIDENT (at 2 o'clock and 5 minutes p. m.). The time of the Senator from North Dakota has expired.

The matter referred to is as follows:

EXHIBIT No. I.

STATEMENT OF MR. ARMOUR.

Senator NORRIS. It would not include the profit you make in perfumery, either?

Mr. ARMOUR. I think not. Before we were in the tanning business we had to sell our hides to the United States Leather Co., or to anybody else. It cuts off there.

Senator NORRIS. I understand that.

Mr. ARMOUR. I did not try to mislead you, Mr. Heney.

The CHAIRMAN. This dollar is on the 55 per cent of the animal that dresses out into meat, is it?

Mr. ARMOUR. Yes, sir. But all our profits—our total business—whether it is made out of perfumery or potash or anything we do, is included in those figures. There is nothing not included. Our leather business is included in those figures.

Senator NORRIS. I understand.

Mr. HENEY. In those figures of fifteen millions profits you have written off something for income tax and excess-profit taxes?

Mr. ARMOUR. Yes, sir.

Mr. HENEY. How much does that amount to?

Mr. ARMOUR. $6,300,000 or $6,800,000.

Mr. MEYER. I will give you the exact figures. It is right on the statement. [Referring to statement.] The total amount for income and excess-profit taxes is $6,800,000.

Mr. HENEY. It does not include anything from Armour's interest in South America?

Mr. ARMOUR. No, sir.

Mr. HENEY. Were they included in the 1917 profits?

Mr. ARMOUR. No, sir. They are a separate company.

Mr. MEYER. They do not do any business in the United States.

Mr. HENEY. But Armour & Co. owns the stock?

Mr. ARMOUR. Yes.

Mr. HENEY. And gets dividends on it?

Mr. ARMOUR. No, sir.

Mr. HENEY. How does that happen?

Mr. ARMOUR. We do not get any dividends from South America, because, in the first place, we are spending more money in South America than we are making, and we have been in the last five years. That is the reason that probably Armour & Co. are big, because we spend more money than we make.

Mr. HENEY. You mean you are spending the money you make, do you not, to make it accurate?

Mr. ARMOUR. And more, too. You are speaking about South America?

Mr. HENEY. Yes.

Mr. ARMOUR. And more, too. I hope it will not always be so, but we have been.

Mr. HENEY. You have been enlarging your plant down there; almost doubling the capacity in Argentina?

Mr. ARMOUR. Yes. But you asked me if Armour & Co. had gotten any dividends from South America.

Mr. HENEY. Yes.

Mr. ARMOUR. We have not.

Senator NORRIS. Is the business in South America run at a loss?

Mr. ARMOUR. No; at a profit.

Senator NORRIS. But you invest the profit in South America?

Mr. ARMOUR. Yes.

Senator NORRIS. Instead of declaring dividends?

Mr. ARMOUR. Yes, sir.

Senator NORRIS. Armour & Co. here as a corporation owns that stock in South America?

Mr. ARMOUR. Yes, sir.

Senator NORRIS. Then, Mr. Armour, how can you explain the fact that you did not account for it?

Mr. ARMOUR. Because it is a separate company.

Senator NORRIS. Exactly. But if you own the stock why should not that be a part of the income of Armour & Co., and if you make any investments——

Mr. ARMOUR (interrupting). I think because we have not brought the money over here. I think the minute we brought the money over here we would have to pay on it. But I think there is a ruling on that, Senator.

Senator NORRIS. So you do not have to do that?

Mr. MEYER. It is only when it is declared as a dividend.

Mr. ARMOUR. We have not taken any money from South America into this company at all. In fact, we could not if we wanted to, because we are spending more money in South America, and have been.

Senator NORRIS. You are building up plants there?

Mr. ARMOUR. Yes. I hope some day that will discontinue.

Senator NORRIS. I rather got the impression from your first statement that you were running your business there at a loss.

Mr. ARMOUR. No, sir. At least, we have not the last two years.

Mr. HENEY. I understood; but probably because I knew a little more about it. In Uruguay recently—and I am speaking from something I read in the newspapers, so if I am wrong correct me—your South American company enters into some contract with Uruguay under which you were to erect a cold-storage plant at the line of Brazil?

Mr. ARMOUR. At Montevideo.

Mr. HENEY. You have put $750,000 into that plant?

Mr. ARMOUR. Yes.

Mr. HENEY. What are the terms under which you erected that plant?

Mr. ARMOUR. I do not know. I think we are to erect that plant with the idea of having so much beef pass through. We do not kill any cattle at Montevideo. The beef that goes through the Montevideo plant will be killed at a place called Santa Anna. That is in Brazil, away from the railroad. We will kill the cattle at Santa Anna, ship them down to Montevideo, which is on the water front, and the boat will come along and take them over to where they are going, and this plant we built at Montevideo is a cold-storage plant; simply a receptacle to take the beef and keep it until it is ready to be shipped on the boat.

Mr. HENEY. Under your contract with the Uruguayan Government you agreed, did you not, that anybody else could use the cold-storage plant as you do for storing meat, by payment, just as if it was a public utility, and at the end of 10 years, unless renewed, the Government is to take it over at a certain price?

Mr. ARMOUR. Yes; I think that is true. But I think there is a reason for that being true. They are giving us a building down there. All we are doing is to put some insulation in it. They are giving us a building that is already erected.

Mr. HENEY. At the end of 20 years they take the insulation and everything else without paying you anything?

Mr. ARMOUR. I do not know what the terms of the contract are. As a matter of fact, I think that does probably include that they can use outside storage by paying us what it is worth.

Mr. HENEY. Have they a building there that is sufficiently large for that purpose?

Mr. ARMOUR. Oh, yes.

Mr. HENEY. So that all you have to do is to put in the cold-storage insulation?

Mr. ARMOUR. I have not seen it. But that is the report we get from our people.

Mr. HENEY. In the interior of the building there must be considerable to do.

Mr. ARMOUR. We have to put in floors and ice machines. You know, $700,000 nowadays does not go very far when you have to buy machinery and pipes and different things at the present market.

Mr. HENEY. I noticed that, signing checks for breakfast.

Mr. MEYER. I hope they are not as big as that.

Senator NORRIS. I find that out when I eat bacon.

Mr. HENEY. I refer to that because it appears to me to be an interesting sidelight on what is being done there.

Mr. ARMOUR. That is hardly a criterion of anything analogous to what you might want to do in this country. I presume that is what you are getting at.

Mr. HENEY. Certainly, that is what I had in mind.

Mr. ARMOUR. But it is not a criterion at all. In that country over there it is not possible—no, I will not say possible—it is not probable that we will be called upon to give anybody space. In the first place, you have to go up in the country and spend a lot of money, as we have had to spend at Santa Anna, which is away from the seashore, and ship down, and up in that country people are not doing the sort of business we have gone into. All they have done up there is to kill cattle and do what they call the jerked-beef business.

Mr. HENEY. Are they not slaughtering the cattle right there in the town?

Mr. ARMOUR. Where?

Mr. HENEY. Where your plant is to be?

Mr. ARMOUR. Yes; but this place is on the dock. This would not be of any use for anybody in the town. I mean they could take beef there. Theoretically that is all very fine, but practically it does not amount to anything. Do you know what I mean? That may be all in there, but practically it does not amount to anything—probably will not be used.

Mr. HENEY. About how far are you away from there with your plant?

Mr. ARMOUR. Santa Anna?

Mr. HENEY. Yes.

Mr. ARMOUR. I guess 250 or 300 miles.

Mr. HENEY. There is no railroad, you say?

Mr. ARMOUR. Oh, yes; there is a railroad. This railroad comes down to Montevideo, and that is the seaport.

Senator NORRIS. I would like to ask Mr. Armour a question right there. This business in South America is owned by the corporation Armour & Co. here in this country?

Mr. ARMOUR. Yes.

Senator NORRIS. It is not owned individually by members of the corporation?

Mr. ARMOUR. No; I do not think so. Is it, Mr. Meyer?

Mr. MEYER. No.

Senator NORRIS. Is Armour & Co. the owner of any other stock located anywhere in the world in the same way? I mean does the corporation of Armour & Co. own other stock in other institutions, whether it is a packing institution or not?

Mr. ARMOUR. Do you mean in the United States?

Senator NORRIS. Anywhere. I do not mean the individuals; I mean the corporation.

Mr. ARMOUR. Yes, Senator. If you will look at the statement here——

Senator NORRIS. You have not that South American stock included in the statement, have you?

Mr. ARMOUR. Investment in allied companies. Our original investment is here; yes.

Senator NORRIS. The amount of stock you have now in it?

Mr. ARMOUR. The original investment is given here.

Senator NORRIS. What I am trying to get at is, Is that an isolated case or is that a common occurrence for the corporation itself to own stock in some other concern?

Mr. ARMOUR. Oh, no. We own stocks in a large number of companies.

Senator NORRIS. Do you own any in any railroad companies?

Mr. ARMOUR. No, sir. These are just companies that we use for Armour & Co.

Senator NORRIS. For instance, is the stock in the plant at Omaha owned by Armour & Co.?

Mr. ARMOUR. No; that is not a separate company. I can give you an illustration.

Senator NORRIS. I wish you would.

Mr. ARMOUR. The Loudon Packing Co.

Senator NORRIS. Where is that?

Mr. ARMOUR. That is at Terre Haute. It is a company that has been in business for many years, and they make catsup.

Senator NORRIS. I do not care so much about their business. I am interested in the stock. Does Armour & Co., as a corporation, own the stock in that corporation?

Mr. ARMOUR. We own 51 per cent of the stock and handle their goods, and that is in that report.

Mr. MEYER. The stock of all the companies in the United States.

Senator NORRIS. Are there any others where the corporations in which you own the stock use the profit of the business for that particular corporation?

Mr. ARMOUR. You are getting at the income. We pay all the stock, all the money, from South America. We do not bring any money over here. The minute we brought any money over in the way of dividends or anything else we would have to pay income tax on it. That is what you are trying to arrive at, is it not?

Senator NORRIS. I do not care about the income tax. I just wanted to get the general idea of the income.

Mr. ARMOUR. We are spending a lot of money over there and are not bringing any money over here.

Senator NORRIS. If this Terre Haute institution was spending a lot of money and wanted to use it and not declare a dividend, but put it all into the business, would you do that? Would Armour & Co. permit that?

Mr. ARMOUR. It would not make any difference, because that would show on our books.

Senator NORRIS. Whether it makes any difference or not, I want to know what the facts are.

Mr. ARMOUR. I could not answer whether we would permit that at all, because it would depend on circumstances.

Senator NORRIS. Are there cases where you do it that way?

Mr. ARMOUR. No; I do not know of any cases. They made a dividend last year and we got our percentage of it. The Loudon Packing Co. and other companies we own when they earn dividends we get them. When they do not earn them, naturally, they do not pay anything.

Mr. HENEY. I would like to ask just a question or two further about the South American business. Does Armour & Co. raise any cattle in South America?

Mr. ARMOUR. No.

Mr. HENEY. Has it not acquired a large amount of land down there?

Mr. ARMOUR. No.

Mr. HENEY. In South America? When I say "large," I mean about 3,000,000 acres.

Mr. ARMOUR. No. We are building at Brazil, and I think we bought 1,200 acres, or something like that.

Mr. HENEY. I meant a large tract.

Mr. ARMOUR. Oh, no, sir. We may have to, but we have not yet.

The CHAIRMAN. Are you interested in any packing house or slaughtering establishment except the three you have mentioned—the one in Argentine, the one in Uruguay, and the one in Brazil? Do you own any in New Zealand?

Mr. ARMOUR. No.

The CHAIRMAN. Australia?

Mr. ARMOUR. No, sir.

The CHAIRMAN. In any European country

Mr. ARMOUR. No, sir.

The CHAIRMAN. Or in Asia?

Mr. ARMOUR. No. That is all, Mr. Chairman; we do not own anything else.

The CHAIRMAN. Have you figured out how much you make per head on your hogs?

Mr. ARMOUR. I can not answer that question.

The CHAIRMAN. Or sheep?

Mr. ARMOUR. The sheep business, as a rule, does not make much money. But I can not answer that question.

Mr. HENEY. Perhaps you can get this information for us by to-morrow morning. How much has Armour & Co. made on hogs during the time it has been under the Food Administration control?

Mr. ARMOUR. I do not think we could get you that by to-morrow morning. We will try to, but I do not think we can get that. I do not think anything we can get you on hogs would be worth anything unless it was up to a certain period of the year.

Mr. HENEY. Suppose you get it for a year.

Mr. ARMOUR. We close our books the 1st of November. I do not think anything we would get you from November on would be worth anything.

Mr. HENEY. Suppose you take it from November 1 to November 1.

The CHAIRMAN. Your fiscal year ends October 31?

Mr. ARMOUR. Yes. We will try to get it for you.

The CHAIRMAN. Generally speaking, your profits on hogs have been larger than the profits on cattle?

Mr. ARMOUR. Yes, naturally, the last three or four years.

Senator GRONNA. I understood from your answer, Mr. Armour, to Senator NORRIS, that part of your capital, as shown in this statement, is in the South American plant. Am I mistaken about that?

Mr. MEYER. That appears there in that report.

Senator GRONNA. Does the amount of profit, then, show in the amount of profits here? Of course, you have not taken out any dividends. But you admit that you have made profits.

Mr. ARMOUR. We have not added any profits at all. That is an entirely separate company, and they have not declared any dividends.

Senator GRONNA. That would hardly answer my question. If you have part of your capital stock, on this statement, as shown in this statement, invested in the South American plant, and you are making a profit on that plant, it does not make any difference whether you declare dividends or not, so long as you have made the profits. Should it not be shown in this statement?

Mr. ARMOUR. I do not think so.

Senator GRONNA. In order to show the real profit that Armour & Co. made?

Mr. ARMOUR. Not necessarily so. We have not thought so, because it is an entirely separate business.

Mr. HENEY. Has the total amount of business you have shown included your South American business?

Mr. ARMOUR. No, sir.

The CHAIRMAN. What is the capital stock of the South American company.

Mr. ARMOUR. I can not tell you. It is either five or ten million dollars.

Senator NORRIS. Do you know what the profit has been down there?

Mr. ARMOUR. Yes.

Senator NORRIS. How much?

Mr. ARMOUR. Do you mean for the last year?

Senator NORRIS. The last year and the year before, or any other years.

Mr. ARMOUR. I do not know what they were for the year before. I think they were in the neighborhood of $10,000,000.

Senator NORRIS. What were they last year?

Mr. ARMOUR. I am talking about last year. I would think in that neighborhood.

Mr. HENEY. By "last year" you mean 1918?

Mr. ARMOUR. Yes.

The CHAIRMAN. That is on your South American plant, your Argentine plant?

Mr. ARMOUR. Yes, sir. I would think it was in that neighborhood.

Mr. HENEY. I have running in my mind for 1917 something like six or seven million.

Mr. ARMOUR. It may have been.

The CHAIRMAN. And the investment is either five or ten million?

Mr. ARMOUR. The investment is a good deal more than that.

Mr. MEYER. It would appear from this statement in evidence that the investment in the allied companies is $43,000,000.

The CHAIRMAN. Could you enumerate those allied companies?

Mr. ARMOUR. We could; but it is a very long list.

Senator GRONNA. It is hard to get through my head, and I am somewhat slow in figuring out these things. I am at a loss to understand the kind of bookkeeping that you would use in adding in your state-

ment here the capital stock or the assets for these outside companies, and then not including the profits that you make.

Mr. ARMOUR. We do. All the profits have been declared; all the dividends have been declared.

Senator GRONNA. That is not the profit.

Mr. ARMOUR. I do not think it is necessary, if you allow me to say so. We can not divide up profits if we are spending the money again.

Senator GRONNA. Just so that you will understand me: I am a man who deals in a small way. I started a little bank close to my home in 1901. We did not declare any dividends at all, but in about 10 years we had made enough profit to double our capital stock.

Mr. ARMOUR. Yes, sir.

Senator GRONNA. We considered that that was profit, whether we issued it or not. So we simply increased our capital stock.

Mr. ARMOUR. From your surplus?

Senator GRONNA. From our surplus.

Mr. ARMOUR. The same as we increased ours from $20,000,000 to $80,000,000.

Senator GRONNA. But every year when we made a statement—we had to render statements quite often, as you know, under the banking laws—every time we had to show that surplus, and we had to account for that profit. In making a statement such as you have made here, why should not the profits be shown? You have said you have made $10,000,000 profit.

Mr. ARMOUR. We have not thought it was necessary to do it.

Senator GRONNA. But is it not necessary that the public should know how much you have made?

Mr. ARMOUR. We issued a statement down in South America. This will show what our profits are down there. But we do not bring them back here.

Senator GRONNA. Let me ask you this question, then: What right have you to take American capital—we will consider that your capital in South America is South American capital—what right have you to take American capital and charge it in this statement, so long as you are not showing the profit?

Mr. MEYER. They are compelled to, in showing their assets under the reports of the Federal Trade Commission.

Senator GRONNA. Would it not be fairer, then, to the public here to deduct that capital, the $5,000,000, because then that would not tend to reduce your profits, while you must admit that this will tend to reduce your percentage of profits with the kind of bookkeeping you are showing here?

Mr. ARMOUR. I do not think so. I think we can explain that to you. I can not explain it to you now, but that we have a separate company in South America, and that company owns the stock in that separate company.

Senator GRONNA. But it is included in this statement?

Mr. ARMOUR. Yes, sir. They do not necessarily have to declare a dividend unless they want to. If they are spending the money, they do not want to declare a dividend.

Senator GRONNA. Let us give an illustration of that. We will say that Armour & Co. have $100,000,000 capital. Five million of that you take to South America.

Mr. ARMOUR. Yes, sir.

Senator GRONNA. And invest it there. You will actually employ, as a matter of fact, only $95,000,000 here in the United States.

Mr. ARMOUR. Yes.

Senator GRONNA. It will make some difference, will it not, whether you use ninety-five million or a hundred million, so far as the rate of percentage of profit is concerned, when you come to figure that? Have I made that plain?

Mr. ARMOUR. Yes; I think you have. I think we can explain that to you. I can not explain it to you now, but I think I can give you a satisfactory explanation of that if it is necessary.

Mr. MEYER. Senator, I am not in the accounting department, but, as I understand it, they are compelled—and I think Mr. Heney may concur—in making their report, to show all their capital, which includes all their assets.

Senator GRONNA. I am trying to show that your figures showing the rate of percentage are not altogether what they might be, but that, to some extent at least, they might be criticized.

EXHIBIT II.

STATEMENT OF MR. SWIFT.

The CHAIRMAN. You were not here when Mr. Swift started this morning, Mr. Heney. At that time he stated that he would rather finish his statement, and then be subjected to questions later.

Mr. HENEY. Oh, I beg your pardon; I did not know that.

Senator NORRIS. We are all subject to that criticism, as we have all interrupted him.

The CHAIRMAN. Yes; occasionally we will forget and interrupt him; but Mr. Heney was not present when Mr. Swift began, and so did not know that he made that request.

Senator NORRIS. Yes; perhaps we had better all refrain from interrupting him until he has finished his statement.

Mr. HENEY. But perhaps Mr. Swift would like to have his explanation of his answer to my last question made at this time, in order to go along with his answer.

The CHAIRMAN. All right.

Mr. SWIFT. That 25 cents is figured out on the values, on a parity between St. Paul and Chicago. That means, perhaps, if the cattle were on the same basis at St. Paul and Chicago. Now, at times, when cattle are scarce, then, of course, they run up on this basis, and they cost more money in proportion in St. Paul, and that 25 cents advantage does not exist, or a portion of it sometimes does not exist; sometimes it is cut to nothing.

Mr. HENEY. Well, the proportion that is the freight and the shrinkage.

Mr. SWIFT. Well, if we pay more for cattle in St. Paul, there is no difference or advantage of killing there—and that often happens.

Mr. HENEY. It often happens, but on the bulk of the cattle you buy in St. Paul that would not be true?

Mr. SWIFT. It is true a good deal. I know a good many times we buy sheep at St. Paul at a higher price, in order to get them.

Mr. HENEY. Well, I will not interrupt you any more.

Mr. SWIFT. Another statement that has been made before this committee that we are very much exercised about and think is very unfair is this statement that has been made here: That the packers made more money under the Food Administration regulations in 1918 than they made in 1917.

The CHAIRMAN. Let me interrupt you just a minute. Was that statement made here, Mr. Heney?

Mr. HENEY. During the first four months of 1918—I think it was limited to that.

The CHAIRMAN. I never understood that they made more than during the preceding year; and I wanted to be certain about that.

Mr. HENEY. During the first nine weeks of 1918.

Mr. SWIFT. If you will examine book 2, page 50, you will find the statement, and it does not say the first nine weeks.

The CHAIRMAN. Well, if you say the statement was made, we will accept that.

Mr. SWIFT. Yes; I do. And the statement covers the entire year 1918; it does not say for a nine weeks' period. Now, that kind of statement, when it is made, does an awful injustice to the packing interests. Even Mr. Chase, the auditor of the Federal Trade Commission, who is doing all the auditing for the Food Administration, because they have no auditors of their own, says the figures are not yet in; they are not compiled, and he does not know what the showing is. But this is what I say, as to Swift & Co., and I am prepared to take oath upon it, and Mr. Chaplin will bear me out—that Swift & Co.'s total profits——

Senator GRONNA (interposing). Mr. Chairman, I dislike very much to interrupt Mr. Swift, but I think it is very important to the committee to know how these profits were figured. I want to say for the benefit of Mr. Swift that it developed when Mr. Armour was before this committee, in the last three days, that all the profits made by Armour & Co. were not included in the statement made by Armour & Co.——

Mr. SWIFT (interposing). Let me tell you what the profits are——

Senator GRONNA (interposing). Now, might not the same thing be true with regard to Swift & Co.?

Mr. SWIFT. No, sir; I think not. I make the statement that all the profits are in here [indicating], and we have a certified audit to that effect; and I do not think there is any question of that kind.

Senator GRONNA. It is due to Mr. Swift to know this. I know that, as one member of the committee, I am absolutely satisfied that we found $10,000,000 of profits made in the South American plant, which was not included in Mr. Swift's statement——

Mr. HENEY. You mean Armour & Co.'s statement.

Senator GRONNA. Yes; Mr. Armour's statement. Whereas, the parts of the assets included in that plant were taken from the American capital and included in the statement, which, of course, would reduce the percentages——

Mr. SWIFT (interposing). Of course, you must not blame me for that.

Senator GRONNA. No; I do not. But I simply wanted to give you an opportunity to say to the committee and to convince the committee—now, in my mind there is a doubt as to how you packers keep books, and I want to bring that question up and to be fair to you, and to let you know that there is a doubt in my mind as to the correctness of your bookkeeping.

Mr. SWIFT. Let me tell you what the figures are, and then I will show you that we have included all there is in the way of profits.

Senator GRONNA. Certainly; I apologize for interrupting you.

Mr. SWIFT. Swift & Co.'s total profits, for all departments for the fiscal year 1918, were $21,157,277.44. This was in 1918, under the Food Administration year. This is 1¾ cents per dollar of sales.

The CHAIRMAN (interposing). Your turnover, you said a while ago, was about a week, on beef.

Mr. SWIFT. Yes, sir. The volume during this year was $1,200,000,000. Now, that is the past year, 1918; and the Food Administration had full control over our profits, as far as related to the meat products—all of the cattle, sheep, and hogs, the profits on those are regulated, but I have not subdivided them into States. This statement [indicating] covers Swift & Co.'s profits from all sources.

The CHAIRMAN. That is in the aggregate.

Mr. SWIFT. Yes; in all departments.

The CHAIRMAN. Does that statement show the capitalization of the various concerns in the aggregate, and the percentage of earnings on that?

Senator NORRIS. Is that statement printed? Could you give us copies of your financial statement?

Mr. SWIFT. Yes, sir; I will have them passed around.

(Copies of the statement were handed to members of the committee.)

Mr. SWIFT (continuing). This statement shows a profit of 1¾ per cent on the sales——

The CHAIRMAN. What I am trying to get at is the capital stock of these various concerns and the rate of profits on them. I do not think that the percentage of earnings on the dollars signifies anything, and I do not think that is entirely ingenuous—I do not mean that offensively—but you said that the earnings were less than 2 cents on the dollar of turnover. Now, that does not mean anything. That is intended to convince the average man, but it is mere trifling. The standards by which to judge earnings is either the capital stock or the capital invested, and the rate of earnings as related to the capital. Now, that is what I wanted to get at.

Mr. SWIFT. Suppose I told you what the percentage of earnings on the capital and surplus is. The surplus is the same thing as money invested.

The CHAIRMAN. Yes. I would like to have that first, on the capital stock, and then on capital stock plus the surplus.

Mr. SWIFT. We have not got it figured on the capital stock; we only figured on the capital and surplus, Mr. Chairman.

Mr. Chaplin, please give the percentage of earnings, capital stock, and surplus.

Mr. CHAPLIN. Eleven and two-tenths per cent.

Senator NORRIS. What is it, Mr. Chaplin, on the capital stock?

Mr. CHAPLIN. I could not tell you exactly; it would be about——

Senator PAGE. Why do you separate the capital from the capital and surplus, Senator NORRIS?

Senator NORRIS. Because the surplus, I presume it will develop on examination, are the profits made in excess of dividends that have been paid during the years in which the surplus has accumulated, and therefore it represents money paid to Swift & Co. by the men who eat the meat. If they have paid dividends in the meantime, at a rate that is fair and reasonable, then this is really the excess profits.

Senator PAGE. For this year?

Senator NORRIS. Any year—whenever it has accumulated. Now, whether the stockholders received the dividends or did not receive dividends is a matter that can be determined by evidence—and also what the dividends were.

Senator PAGE. Well, is there any reason to believe that this surplus is not excessive earnings that have been held in reserve?

Senator NORRIS. There is no reason whatever. I have no doubt that this surplus of about $85,000,000, as shown in this financial statement of Swift & Co., is excess of earnings; that is, a profit above the payment of a reasonable dividend during the years in which it accrued.

Senator PAGE. Yes; but do you know how many years it has taken to build up that surplus?

Senator NORRIS. No.

Senator PAGE. Is that not material?

Senator NORRIS. No; and I am not saying that, during all of these years, a dividend has been declared; but that is something that can be shown by the witness on the stand, I presume.

Mr. SWIFT. But, according to your argument, if this $84,000,000 shown in this statement as surplus—if the capital was increased and stock issued to represent that capital, and we had no surplus, this $84,000,000 would be shown as part of the capital. That is to say, as it is now, Swift & Co.'s capital is shown there at about $116,000,000——

Senator NORRIS (interposing). The capital stock is given as $150,000,000.

Mr. SWIFT. No, sir; there is some on hand in the treasury.

Mr. HENEY. There is $35,000,000 on hand in the treasury.

Mr. SWIFT. Just to get the figures even and not have any fractions, I will say that if the capital was $116,000,000, and you took this surplus of $84,000,000 and issued capital against it, then the capital would be $200,000,000.

Senator NORRIS. Exactly, but that would not make a bit of difference. That would simply be a stock dividend. But if the facts developed should show that it was, that you had never put the money in, but that that had come from the excessive earnings, and the people who eat meat had paid it, that is a thing that ought to be shown. I was not arguing the question as to whether it was right or wrong; but it is certainly a thing that we have a right to know, what your dividends are on your capital stock.

Mr. SWIFT. Certainly.

Senator NORRIS (continuing). And what your surplus earnings are on what the people have eaten in excess of a reasonable profit, is a different thing——

Mr. SWIFT (interposing). Wait just a minute, please; you have a right to know what the earnings are on the capital stock.

Senator NORRIS. Yes.

Mr. SWIFT. Now, as I said, if this surplus of $84,000,000 was put into the capital account, then the capital would be $200,000,000, and then, in figuring the earnings on $200,000,000, you would get back to the same thing as figuring the thing on capital and surplus.

Senator NORRIS. But I would not figure it that way. If it developed that it was a stock dividend that had not been paid in in cash, I would deduct it, in determining what you rate of profit was, or your dividends.

Mr. HENEY. In other words, you want to know what part of the present capital comes from stock dividends.

Senator NORRIS. Yes, how much is watered?

Mr. HENEY. And whether the stock was sold for par, and if not, what it was sold for.

Senator NORRIS. Did he answer my question?

Mr. CHAPLIN. About 15 per cent.

Mr. SWIFT. Earnings on the capital.

Senator NORRIS. Have you ever declared a stock dividend? Is any of this capital stock a stock dividend?

Mr. SWIFT. Yes; we have declared a stock dividend.

Senator NORRIS. Of how much and when?

Mr. SWIFT. Of $25,000,000, against a reappraisal of our inventory of the packing house.

Senator NORRIS. Yes. Now, how much actual cash is represented, Mr. Swift, in your capital stock?

Mr. SWIFT. Oh, it is all actual stock.

Senator NORRIS. Well, there was stock dividend. I mean actual cash paid in by the people who own the stock; you would have to take out any water that is in it, if there is any.

Mr. SWIFT. I beg your pardon, there is none.

Senator NORRIS. I did not say there was. I am trying to find out. You would have to take out any stock dividend that is in it, and then if it is true that you have always declared a dividend, I would like to know that, because that would make a difference. You are entitled to a fair profit all the time, of course.

Mr. SWIFT. The general dividend has been 7 per cent for a majority of the time.

The CHAIRMAN. Has that been paid pretty uniformly for the past 25 or 30 years?

Mr. SWIFT. Yes, sir; but we got up to 8 per cent dividend a couple of years ago.

Senator NORRIS. Mr. Chaplin gave the answer to my question as 15 per cent. Was that figuring on a capital stock of $150,000,000?

Mr. CHAPLIN. No.

Senator NORRIS. How much?

Mr. CHAPLIN. I think it was about $135,000,000; it was $135,000,000 a part of the time and $150,000,000 part of the time.

Senator NORRIS. Yes.

Mr. SWIFT. Would you gentlemen please turn to the page of the pamphlet's financial statement that is marked "Summary of profits for the fiscal year November 3, 1917, to November 2, 1918"——

The CHAIRMAN (interposing). Before you go to that, you say that $25,000,000 of stock was issued against a reappraisement?

Mr. SWIFT. Yes.

The CHAIRMAN. Was that an increased value of the physical properties over and above the appraisal that was formerly put in?

Mr. SWIFT. Yes, sir.

The CHAIRMAN. And that $25,000,000 would probably represent the unearned increment, probably on real estate values?

Mr. SWIFT. Yes, sir; but that came out of our surplus, too. We made our surplus that much less. You might say this, Mr. Chairman, that these stockholders of ours have only been getting 7 per cent for a period of, say, 30 years, or whatever it is. Now, a man ought to be entitled to 7 per cent interest on his money, even if he has the collateral for it and did not take any risk at all.

The CHAIRMAN. Yes.

Mr. SWIFT. Now, these men have put their money into the company, and they took all this risk, and they only got 7 per cent, and they are likely to lose it all. Now, the policy of the company was not to pay any stock dividend until lately. Now, if they see fit to put out this $25,000,000 in a stock dividend, as you call it, it is only an adjustment for those men that are only getting 7 per cent on their money, with all that risk.

The CHAIRMAN. I was not raising a point at this time as to the propriety of the policy; I was merely inquiring as to the facts.

Mr. SWIFT. Yes.

Senator NORRIS. On the first page of your financial statement you have set aside $16,500,000 for taxes. That is the Federal income tax and foreign taxes, is it not?

Mr. SWIFT. Yes.

Senator NORRIS. How much of that is for foreign taxes, if you know?

Mr. SWIFT. What page is it on?

Senator NORRIS. It is stated among the liabilities.

Mr. SWIFT. It is for Federal and foreign taxes. Can I have Mr. Chaplin answer that question?

Senator NORRIS. Yes; certainly.

Mr. CHAPLIN. About $5,000,000 for foreign taxes.

Senator NORRIS. Where are the foreign taxes paid?

Mr. CHAPLIN. In Great Britain, South America, and Australia.

Senator NORRIS. Australia? Have you a packing plant in Australia?

Mr. SWIFT. Yes.

Senator NORRIS. Well, is that incorporated—your plant in Australia?

Mr. SWIFT. Yes, sir.

Senator NORRIS. Is that one of your subsidiary companies?

Mr. SWIFT. I will explain about that. I would like to do it a little later. The Australian and South American plants have been separated from Swift & Co.

Senator NORRIS. Yes.

Mr. SWIFT. I will go into that a little later.

Senator NORRIS. You have got the factors included here in this statement. I think you ought to state, while you are on that subject, whether you included in your assets here [indicating] the incomes that have come from South America, Australia, and Great Britain.

Mr. SWIFT. That will develop on the next page, if you will turn over one page of the financial statement.

Senator NORRIS. Just in a general way, is it included in this statement—all the incomes from those foreign properties?

Mr. CHAPLIN. Yes; it is.

Senator NORRIS. That is all here, is it?

Mr. CHAPLIN. Yes, sir.

Mr. SWIFT. Would you turn over to where it says, "Summary of profits for fiscal year November 3, 1917, to November 2, 1918?" It says this is the first year under the regulations of the United States Food Administration, and is for 12 months; and down below it says this is business under regulations of the United States Food Administration, being the manufacture and sale of products from the slaughter of cattle, calves, sheep, and hogs.

It says:

"The earnings from this business were limited by the regulation to 9 per cent on the capital employed and not to exceed 2½ per cent of the sales."

Now, in lieu of the 9 per cent that we were allowed, we actually earned the 7.57 per cent, and in lieu of the 2½ per cent on the turnover, it figures out actually 2.04 per cent.

Senator KENYON. You did not make as much as you could have made under the Hoover regulations?

Mr. SWIFT. That is right; that first subdivision, above that note, relates to fresh meat. That was under the control of the Food Administration.

Now, the other articles, that were not food products, are covered in the general statement below that note on the financial statement.

All put together, they show that we have net earnings for the year of 21,000,000-odd dollars. Now, I say, "net," because we have reserve, as you will see right above those figures, $21,000,000—$11,000,000 that we expect to pay out for taxes. That leaves us a net of $21,000,000, of which $9,000,000 has been paid out for dividends, and $13,000,000 has been transferred to the surplus account.

The CHAIRMAN. Do you exclude all the taxes in arriving at the percentage of profit on investment?

Mr. SWIFT. Well, when you say "net profit" in a case like this, Mr. Chairman, and show the taxes right in connection with it, that does exclude them; but we cover both. It says, on one line, "less reserve for Federal and foreign taxes, $11,000,000"; and on the next line below that it says, "net earnings for year, $21,000,000."

The CHAIRMAN. Then, plus the taxes, it would be $30,000,000?

Mr. SWIFT. Thirty-two million dollars.

The CHAIRMAN. Was it your understanding that Mr. Hoover's regulation of 9 per cent meant 9 per cent apart from the amount necessary to pay for taxes?

Mr. SWIFT. None of those taxes came out of the Food Administration part of the business; none of those taxes have come out of the Food Administration Department.

The CHAIRMAN. That is what I am trying to get at. You construed Mr. Hoover's order to permit you to earn 9 per cent, and in addition to that to earn enough to pay your taxes?

Mr. SWIFT. No; we paid the taxes out of the 9 per cent.

The CHAIRMAN. I did not get it, if that is true.

Senator NORRIS. No; that is not shown by this financial statement.

Mr. SWIFT. None of these taxes are shown in the figures under the Food Administration part of the business; they do not come out of that.

The CHAIRMAN. Then, your 9 per cent which you are allowed by the Food Administration covers this $21,000,000, and also covers the $11,000,000 reserved for taxes.

Senator NORRIS. No; the $21,000,000 does not refer to the part of the business that is regulated by the Food Administration.

Mr. SWIFT. The 9 per cent limited by the food regulations referred only to food items; that refers only to beef and mutton and pork, as they had only the authority to deal with those things.

The CHAIRMAN. And your products are not only beef but other products?

Mr. SWIFT. Yes; a great many others, such as fertilizer, soap, etc.

The CHAIRMAN. And that was limited to 15 per cent, was it?

Mr. SWIFT. That was limited afterwards. There are only two subdivisions.

The CHAIRMAN. What I am trying to get at is this: The $21,000,000 does not include your taxes; as I understood, your taxes are in addition to that, which would make the total profit amount to $32,000,000, including the taxes.

Mr. SWIFT. That is right. But the figures that we give with regard to the food products, under the Food Administration, are not on the same basis; their share of the taxes has come off of that.

The CHAIRMAN. Well, including your share of the taxes, what per cent would the earnings be on your capital stock?

Mr. SWIFT. Mr. Chaplin, can you tell me that?

Mr. CHAPLIN. It would be about 16 per cent on the capital and surplus.

The CHAIRMAN. Well, how much on the capital stock?

Mr. CHAPLIN. About 25 per cent, I think.

Mr. HENEY. A little over 28 per cent on $116,000,000.

Mr. CHAPLIN. No; it was $100,000,000 at the beginning of the year, and $116,000,000 during part of the time, and the rest of the time $135,000,000.

Mr. HENEY. But during that time you had the profit on Libby, McNeill & Libby, and on the International Co.

Mr. CHAPLIN. Yes, sir.

Mr. SWIFT. Shall I go on with my statement?

The CHAIRMAN. Yes.

Senator KENYON. Before you leave that subject: How do those profits compare with the year before? Before you answer I will say that I noticed a statement in the Paris papers that you claimed you had lost $10,000,000 under these Hoover regulations.

Mr. SWIFT. Our profits are only about half what they were the previous year.

Senator NORRIS. Did you write a letter to Mr. Hoover in Paris and tell him you had lost $10,000,000?

Mr. SWIFT. No; I did not write any letter to Mr. Hoover. I suppose the way he got at that was that our statement had been sent broadcast, that our profits for the year 1918 was $21,000,000, and the statement of the year before, that our net profits, after reserving for the taxes, were $34,000,000. Now, he, in his mind, has said here was a reduction of at least $10,000,000, or something like that.

Senator NORRIS. Then Mr. Hoover is wrong in this statement, so widely distributed, which was cabled over here about your losing $10,000,000 in the last year's operations, is he not?

Mr. SWIFT. Of course, Senator, it could not be a loss; a man can not lose what he does not have.

Senator NORRIS. I understand that; but I am speaking of Mr. Hoover's published statement.

Mr. SWIFT. If he said that our earnings were $10,000,000 less than the previous year——

Senator NORRIS (interposing). No; I understand that he said you had lost $10,000,000.

Senator KENYON. No; he said the profits were $10,000,000 less than the previous year.

Senator NORRIS. Oh, was that it?

Mr. SWIFT. If he said our earnings were $10,000,000 less than the previous year, to be technically right, he should have said $13,000,000.

—

EXHIBIT III.

STATEMENT OF STUART CHASE, CERTIFIED PUBLIC ACCOUNTANT, 1648 EAST FIFTY-FOURTH STREET, CHICAGO, ILL.

Mr. CHASE. My name is Stuart Chase, certified public accountant, 1648 East Fifty-fourth Street, Chicago, Ill.

Senator NORRIS. Are you in the employ of the Federal Trade Commission?

Mr. CHASE. I am.

Senator NORRIS. How long have you been an expert accountant? How long have you been at the business?

Mr. CHASE. Since September, 1910.

Senator NORRIS. How old are you?

Mr. CHASE. Thirty.

Senator NORRIS. As such accountant, were you called upon by the Federal Trade Commission to make an examination of the packers' books?

Mr. CHASE. I was.

Senator NORRIS. When was that?

Mr. CHASE. That was in September, 1917.

Senator NORRIS. That was while this investigation was on?

Mr. CHASE. Yes.

Senator NORRIS. How long did you work on their books and what did you do?

Mr. CHASE. I was put in charge of the investigation of costs at Armour & Co.; and that work lasted for two months, until about the 1st of November, at which time I was called to Washington and wrote a report on packers' costs; discussed the matter with the Federal Trade people, and then at the instance of Mr. Dana Durand and Mr. Cotton I was transferred from the Federal Trade Commission to the Food Administration, to take charge of the accounts that the packers were to render the Food Administration profit regulation. I remained with the Food Administration until the 15th of May, 1918, at which time the Food Adiminstration, having made an arrangement with the Federal Trade Commission that the commission should take over the certification and the inspection of the packers' accounts transferred me back to the Federal Trade Commission.

Senator NORRIS. And you are there now?

Mr. CHASE. I am still in their employ.

Senator NORRIS. I wish you would tell the committee what you found in regard to the profits of the packers. Take Swift & Co., for instance, first.

Mr. CHASE. I recently prepared for the commission a statement of packers' profits for the entire business for the years 1912 through 1917.

Senator NORRIS. That is the calendar year?

Mr. CHASE. That is their fiscal year.

Senator NORRIS. When does that commence?

Mr. CHASE. Well, that commences about the 1st of November.

Senator NORRIS. You mean, then, commencing November 1, 1917?

Mr. CHASE. Yes.

Senator NORRIS. Or 1916?

Mr. CHASE. That would be ending November 1, 1917.

Senator NORRIS. And commencing in 1916?

Mr. CHASE. November 1, 1916; yes.

Senator NORRIS. And up to and including the first year ending November 1, 1917—that is the last?

Mr. CHASE Yes. The packers are just reporting their results for 1918.

Senator NORRIS. Now, tell the committee what the profits were.

Mr. CHASE. Well, I first ought to preface any statement that I make of profits as an accountant by the fact that neither myself nor the packers, nor anybody else, knows accurately what the packers' profits are.

Senator NORRIS. Why?

Mr. CHASE. Because of a great number of reasons, of which the most important are their methods of taking inventories and their methods of handling subsidiary company profits. Those are the outstanding difficulties that are encountered. And in addition, we find such matters as excessive or deficient depreciation charges; items that properly should be capital expenditures are charged against profit and loss. And many other things that I could go into at some length if you desire. But this matter of inventories——

Senator NORRIS (interposing). Well, does that method have a tendency to cover up the profits? Is that the effect of it?

Mr. CHASE. That is the effect of it, yes; whether it is done consciously in every case I could not affirm for a minute. There are certain inherent difficulties in packers' accounting that make it impossible for the packers themselves always to accurately determine their profits. But they can do a great deal better than they have been doing, in my judgment.

Senator NORRIS. Well, take the one item of charging up to expense accounts something that should be capital account. What is the effect of that?

Mr. CHASE. Why, of course, the effect of that is to decrease the true statement of profits in that particular year.

Senator NORRIS. In other words, it covers up some of their profits?

Mr. CHASE. It covers up their profits; yes.

Senator NORRIS. All right, go ahead with your statement.

Mr. CHASE. Now taking the five companies combined, their published figures, as amended by such analysis as the commission has made—which is by no means a complete analysis, and the commission does not certify in any way to these figures; it simply believes them to be a more accurate statement of profit than as published by the packers—we find that the total for the five companies in 1912 was $18,715,000; in 1913, $20,217,000; in 1914, $22,108,000; in 1915, $40,052,000; in 1916, $60,759,000; in 1917, $95,639,000.

Senator NORRIS. You don't have them for 1918? Did you give any part of the year 1918?

Mr. CHASE. No part at all; no.

Senator NORRIS. Now, the profits since the Food Administration has had control of the packers have been greater than they ever were before, have they not?

Mr. CHASE. That I could not say.

Senator NORRIS. Do you know when the Food Administration took charge?

Mr. CHASE. Yes; November 1, 1917. The packers' profits, as reported by them, are rather less than in the year 1917; but as we have not made any careful audit for the year 1918, books having just been closed within the last few days, I could not give you any statement as to what we really believe the profits for 1918 to be.

Senator NORRIS. You haven't made any examination, then, since the Food Administration took charge?

Mr. CHASE. I have made a series of test examinations on specific items, but no comprehensive examination of profits as a whole.

Senator NORRIS. What do those tests show, that you took, if they show anything?

Mr. CHASE. Well, they show a great many things. For instance, the Food Administration regulations provided that the inventories of the packers should be at market, full and fair market, and on November 1, 1917, Swift & Co. raised all their inventories to comply with the Food Administration regulations, but the other packers, with the possible exception of Morris & Co., did not do so. They continued to take their inventories at market, or at cost, and the result was that the packers started the year on a different basis. Here was Swift with his inventories way up, Morris with his inventories part way up, and the other three back on the old basis, contrary to the regulations of the Food Administration. But when it came to the end of the first accounting period on January 1, 1918, or thereabouts, Swift & Co. dropped back to their old method of cost and market; the others dropped still lower; and the result was that the first periods' profits came out very low; and before any comprehensive or accurate statement can be made as to packers' profits for the year 1918 that inventory situation has got to be straightened out.

Subsequently the Food Administration amended its regulations so as to provide that the packers might inventory at market or at cost, where they had costs, and that, of course, ruled out Swift's original inventory, which had the interesting effect of throwing into the month of October—that is, the month before the regulation went into effect—about $11,000,000 profit which under the amended regulations was really a part of 1918 profits. Swift thereby kept out perhaps four or five million dollars of profits—threw it back into the old year—which really belonged in the new year. Of course, Swift & Co. can not be blamed for following the regulations of the Food Administration on November 1, but it is rather dark as to why, having started off in such an exemplary fashion, they dropped back to their old method at the end of the first accounting period.

That was one part of our examination—inventories—and the more we go into inventories the more dubious the whole situation becomes. The packers have said all along that their inventories were at cost, wherever they could get cost, and at market where they could not secure cost; but we find by analyzing those departments where costs rule that these costs are from the accounting point of view not dependable. For instance, Armour & Co. reported that their glue-department inventories were founded on cost, and when we came to investigate Armour's glue department we found that back in 1907 certain costs per pound of various grades of glue had been determined and that those 1907 costs had been used ever since in making up their inventories. Of course, as a matter of fact, true costs had increased sharply, and Armour & Co. had been calculating their costs for memorandum purposes, and we took those memorandums that they had accumulated of their glue costs and applied them to the year 1918, and we found that it made a difference of about $300,000 in that one department alone. That is, by using their old 1907 costs they had—I won't say covered up, but they had eliminated from their total profits $300,000 that under a proper cost system should appear in that year.

Senator NORRIS. For glue?

Mr. CHASE. For glue alone. And we find that Cudahy is including selling and administrative items with their costs. From the accounting point of view costs for inventory purposes should be cut off with the manufacturing expenses. Selling expenses are something that are on beyond, and the administrative expenses are largely on beyond. But Cudahy includes all three of these items in their inventory cost.

And we found considerable difficulty in getting at the true costs of Swift's glue. That department was pointed out to us as the best cost department that Swift had, but my assistant, Mr. Tatar, has just been examining inventory costs there and finds them in a very sad state indeed. So much for inventories at cost.

When we get onto those departments which are inventoried at market we find that a great many of the products have no ascertainable market against which any governmental or outside reviewing body can measure the accuracy of the prices taken for inventory purposes. In other products the packers, through their great system,

more or less dominate the market and can make it what they choose, while for the remaining products there is an outside market that can be used to check the prices that they use. But their practice is to deduct from that market price certain items for carrying costs, and so on, which are very difficult to certify to. And, in fact, the whole inventory situation may be summed up, so far as these market prices are concerned, by the remark of Mr. Chaplin, of Swift & Co., their chief accountant—a very able man, who probably knows more about packers' accounting than anyone else in the country—and after a long conference, in which we had been trying to get at the bottom of this situation, he finally came out rather impatiently and said, "We get our inventory prices out of our own heads."

Now, that is probably true. The various managers of the departments and various officials set the prices of these market departments according to their own judgment, and that judgment is the basis of many years' experience; and, while it may be sound judgment—particularly from the packers' point of view—it precludes any governmental investigating body from certifying to the accuracy of the market inventories, excepting to a very limited degree; and as these inventories are enormous, and as their effect on profits is profound, you can see immediately how difficult it is to determine accurately what packers' profits are and how easy it is for the packers, by exerting their own individual judgment, "out of their heads," to transform a large profit into a smaller profit, or even into a positive loss, without serious chance of discovery.

Senator NORRIS. Do you know anything about the different classes of business upon which certain profits were allowed by the Food Administration to the packers?

Mr. CHASE. Yes, sir.

Senator NORRIS. Well, can you tell us whether under their system of bookkeeping it was possible for them to transfer what should be a profit in one of those classes to another?

Mr. CHASE. Oh, very easily, and practically impossible to detect.

Senator NORRIS. For instance, they were allowed to make 9 per cent on one class of business, 15 per cent on another, and then on another class there was no limit.

Mr. CHASE. No limit.

Senator NORRIS. Well, were they able to hold the profit down to 9 per cent on one, 15 per cent on the other, and manipulate the items and the business in such a way that the profits would go into the class where there was no limit?

Mr. CHASE. It would be very easy to do so, and almost impossible to detect. We have found in our examination a number of instances where the transfer of prices from class 1 to class 2 seemed to us to be unduly low. I remember Morris & Co. in their first period transferred their native cattle hides from their hide department, which is in class 1, to their leather department, which is in class 2, at a figure about 4 cents under what the other packers apparently were transferring at.

Senator NORRIS. That would enable them to make 15 per cent instead of 9?

Mr. CHASE. Yes, sir.

Senator NORRIS. If they were transferred on some basis that was not the real value, it would increase it still more, would it, or would it not?

Mr. CHASE. Well, of course the lower the transfer price used in class 1 the less the credit in class 1 and the less the profit in class 1 and the more the profit in class 2.

Senator NORRIS. If they were transferred at a low price, it would increase the profit they could make off of it in the class to which it was transferred?

Mr. CHASE. Yes.

Senator NORRIS. Could you tell from your examination, and do you know, to what extent this was carried on?

Mr. CHASE. I could not say. We have been, largely during my absence from Chicago, making an examination of transfer prices on about 20 standard products that went from class 1 to classes 2 and 3; and the final results of that study I have not seen as yet, but I saw the start of it, and there were some quite surprising variations between the several packers in the transfer prices used.

Senator NORRIS. Now, these profits, I wish you would give them, if you can, showing the profit of each one of the five big packers instead of in gross. Have you got it analyzed so you can do that?

Mr. CHASE. You could have a copy of this, if you want it [indicating paper].

Senator NORRIS. If you can read it, then give the reporter a copy, if you have it tabulated.

Mr. CHASE. I also have it by the index of growth, taking the year 1912 as 100.

Senator NORRIS. Go over it in each way that you have it.

Mr. CHASE. Here is Armour & Co. I also show the profit for the fiscal year 1904 for Armour, because the Bureau of Corporations at that time made a report in which it exhibited the figures. Armour & Co., 1904, $1,850,000; 1912, $5,702,000; 1913, $6,158,000; 1914, $7,640,000; 1915, $11,156,000; 1916, $22,849,000; 1917, $27,137,000.

Senator NORRIS. Now, can you give the per cent of profit each time as you go along, or have you that differently?

Mr. CHASE. The per cent of increase?

Senator NORRIS. No; not of increase, but the per cent of profit, the dividend that could be declared, or was declared. Of course, the amount of profit without their capital stock and so forth would not give us very much information.

Mr. CHASE. Well, the fairest way probably to show that is the per cent on their net worth—that is, the capital and surplus.

Senator NORRIS. Yes; could you put that in as you go along in giving the gross profits?

Mr. CHASE. I think so.

Senator NORRIS. I wish you would do that.

Mr. CHASE. I haven't it for 1904, but I have it for——

Senator NORRIS (interposing). That is Armour & Co. you are speaking of now?

Mr. CHASE. Yes. Here is Armour in 1912, 6 per cent on the net worth; 1913, 6.1 per cent; 1914, 7.3 per cent; 1915, 10.2 per cent; 1916, 19.2 per cent; 1917, 19.8 per cent.

The prewar average—that is, for the years 1912, 1913, and 1914—is 6.5 per cent; and the "war" average—that is, for the years 1915, 1916, and 1917—is 16.7 per cent.

Senator NORRIS. You mean 16 per cent?

Mr. CHASE. Yes; the average for the three war years.

Senator GRONNA. In other words, it is 10 per cent higher during the war than before the war?

Mr. CHASE. No; 10 per cent additional—over 250 per cent higher.

Senator GRONNA. What is that percentage based upon?

Mr. CHASE. That is on their net worth, capital stock and surplus.

Senator GRONNA. Capital stock and surplus. Are any bonds taken into consideration there?

Mr. CHASE. No.

Senator GRONNA. Just capital stock and surplus?

Mr. CHASE. Yes.

Senator GRONNA. The same as a bank would make a statement with reference to its percentage. Of course, there is such a difference in making these returns that many people who are not familiar with accounts do not understand that. I will take it that our chairman is familiar with it, but I find a good many of the lawyers who are not expert accountants—I don't claim to be one myself, but I do know something about making returns for banking institutions, as I own two small banking institutions myself, and the bankers, of course, when they pay a percentage they pay a percentage upon the stock alone, not upon surplus. Now, do the packing concerns, in figuring their percentage, do they take surplus into consideration?

Mr. CHASE. They declare dividend on the stock, of course.

Senator GRONNA. Just the stock?

Senator NORRIS. This is not the packers' reports; this man is from the Trade Commission.

Senator GRONNA. I understand that, Mr. Chairman; but I want to know what he has based it upon; whether it is upon the stock or upon stock and surplus.

Senator NORRIS. Upon stock and surplus, I think he said.

Mr. CHASE. Upon stock and surplus.

Senator NORRIS. Now, take up the other packers and go through the other way. You can put the percentage in all at once.

Senator GRONNA. Now, I want to have that clear in my mind. That is important. Is it upon stock and surplus or upon the stock?

Mr. CHASE. Upon stock and surplus. "Net worth" is the accounting idiom for that total.

Senator NORRIS. Then the percentage they make is a great deal more than you have it in your figures, because they have a tremendous surplus?

Mr. CHASE. A tremendous surplus; yes. This really is the percentage of profit upon the stockholders' equity.

Senator GRONNA. Well, take a case, now, where the stock is $100,000,000 and assume that the surplus is $50,000,000; now, the way a bank would figure that dividend or profit would be simply upon the stock, the $100,000,000. We would never think of basing it upon the $50,000,000. Of course, if you make it upon the $150,000,000, the dividend or the profit necessarily would be much smaller.

Mr. CHASE. Yes. The reason that we select the figure of net worth is because it is the only way that you can compare the five packers with any fairness to themselves or anyone else, because if you figured the percentage on the stock alone, the fact that some of them have issued stock dividends and capitalized their surplus and others have not, would give you tremendous percentage in some cases on the capital stock, and much lower percentages in other cases; and you could not really get any sound basis of comparison. But I can read, Mr. Chairman, at the same time the percentages on their capital stock, which I have here.

Senator NORRIS. I wish you would.

Mr. CHASE. Which show the very reason why I don't consider this method the soundest by and large.

Armour & Co., 1912, 28.5 per cent. This is on their capital stock.

Senator NORRIS. That would be their dividend, or what they could declare as dividend.

Mr. CHASE. That is what they could declare; 1913, 30.8 per cent; 1914, 38.2 per cent; 1915, 55.8 per cent; 1916, 114.2 per cent; 1917, 27.1 per cent.

Now, you see by examining that alone you would be led to believe that they made a tremendous profit in 1916 and fallen off sharply in 1917, but the fact of the matter is that on the net-worth basis they had a higher percentage in 1917 than they did in 1916, the answer being that Armour's capital stock in 1916 was $20,000,000, and they issued a stock dividend of $80,000,000, and by the time they got around to the next year you have to figure it on a $100,000,000 basis.

Senator GRONNA. They increased their capital stock issue?

Mr. CHASE. Yes; but no cash was paid in; not a penny of cash.

Senator NORRIS. They did it by converting the surplus into capital stock?

Mr. CHASE. Yes; into capital stock.

Now, we can take Swift & Co. I will read the actual money, the percentage on net worth, and then the percentage on capital stock. Swift & Co., 1904, $3,850,000.

Senator NORRIS. Now, name it as you go along. That is profit?

Mr. CHASE. Yes, profit; 1912, $8,745,000; 1913, $9,449,000; 1914, $9,651,000; 1915, $23,387,000; 1916, $24,195,000; 1917, $47,236,000.

Now, the percentage on net worth for Swift was, in 1912, 8.6 per cent; 1913, 8.7 per cent; 1914, 8.5 per cent; 1915, 19.8 per cent; 1916, 19.1 per cent; 1917, 33.4 per cent.

Their prewar average was 8.6 per cent. Their war average was 24.5 per cent.

They have pretty nearly trebled their rate in the war years over the prewar years.

Their percentage on capital stock was, in 1912, 11.6 per cent; 1913, 12.6 per cent; 1914, 12.8 per cent; 1915, 31.2 per cent; 1916, 32.2 per cent; 1917, 63 per cent.

I think in the case of Swift there was also an increase in the capital stock. They went from $75,000,000 to $100,000,000 during that period. I think it was in 1916. That affects these last percentages, of course.

Senator GRONNA. But, at any rate, they made more profit during 1917 than they did in the years before?

Mr. CHASE. Oh, yes; 1917 is the banner year in the packing industry. There never was such a year.

Now, Morris & Co., their gross profit in dollars in 1912 was $1,813,000; 1913, $1,917,000; 1914, $2,206,000; 1915, $2,321,000; 1916, $4,890,000; 1917, $8,012,000.

Their profit on their net worth was, in 1912, 6.1 per cent; 1913, 6.9 per cent; 1914, 7.5 per cent; 1915, 7.5 per cent; 1916, 15 per cent; 1917, 22.6 per cent.

Their prewar average was 7.2. Their war average was 15.4.

Now, on the rate on capital stock you will see some very amusing figures. In 1912 it was 60.4 per cent; in 1913, 63.9 per cent; 1914, 73.5 per cent; 1915, 77.3 per cent; 1916, 163 per cent; 1917, 267.7 per cent.

You see Morris never capitalized their surplus. They kept their old figures of $3,000,000 through a great number of years without raising it.

Senator NORRIS. Well, it might be interesting there to know whether in the meantime they had declared dividends and actually paid them to their stockholders.

Mr. CHASE. Oh, yes.

Senator NORRIS. They had always declared dividends during all those years?

Mr. CHASE. Yes.

Senator NORRIS. So that, as a matter of fact, this increase in their capital stock came about not from money that they put in, but from profits in the business?

Mr. CHASE. That is the case of the other companies, but Morris did not increase their capital stock.

Senator NORRIS. I understand they did not.

Mr. CHASE. But their surplus piled up.

Senator NORRIS. But it is important to know whether that increase was a proper basis upon which to pay dividends. It is important to know whether there were dividends in the meantime paid to their stockholders. Of course, their stockholders were entitled to at least a reasonable dividend. They were paid all the time?

Mr. CHASE. Oh, I am sure they got their reasonable dividend right along. I understand they did.

Senator NORRIS. And the surplus came out of the excess profits?

Mr. CHASE. Yes; which the American public paid for.

Senator NORRIS. Yes.

Mr. CHASE. Wilson & Co., in 1912 their profit in dollars was $1,326,000; in 1913, $1,364,000; in 1914, $1,209,000; in 1915, $2,464,000; in 1916, $5,314,000; in 1917, $8,319,000.

Their profit on their net worth was in 1912—we have not figured that because of the unreliability of Wilson & Co.'s profits in 1912 to 1915. They reported as I have read them to you, but subsequently a firm of accountants went over the books and revised them completely, finding all kinds of errors. Those revised figures we did not see, and so we have not given the per cent of profit on the net worth for Wilson, excepting in the years 1916 and 1917. In 1916 the net worth was 14.5 per cent; 1917, 29.6 per cent. Which, on their capital stock, amounts to 7.9 per cent in 1916 and 27.6 per cent in 1917.

Now, Cudahy, in round dollars, in 1904, $928,000; 1912, $1,129,000; 1913, $1,329,000; 1914, $1,402,000; 1915, $724,000; 1916, $3,511,000; 1917, $4,935,000.

The profit on net worth for Cudahy in 1912 was 7.1; in 1913, 7.8; in 1914, 7.9; in 1915, 4 per cent; in 1916, 19.4 per cent; 1917, 23.2 per cent.

Their prewar average is 7.6 per cent, and their war average is 16 per cent.

Senator NORRIS. How do you account for that small profit there of 4 per cent in one of the war years?

Mr. CHASE. Well, I haven't any personal knowledge of it at all. It has been told to me by some of the other investigators that at that time Cudahy had come to some misunderstanding with the other packers.

Senator NORRIS. What year was that?

Mr. CHASE. That was in 1915.

Cudahy's profits on their capital stock were, in 1912, 9.4 per cent; in 1913, 11.1 per cent; 1914, 11 per cent; 1915, 6 per cent; 1916, 29.2 per cent; in 1917, 35.2 per cent.

That completes the list. But I want to say again, as I said before, that I can not in any way certify to these figures, but simply believe them to be more accurate than the profits as reported by the packers themselves.

Senator NORRIS. Well, they are the figures that you believe to be as near correct as you can reach a conclusion, are they?

Mr. CHASE. Yes; so far as our analysis has extended. You see, the packers have a way in reporting their profits to the public through advertisements and annual statements and elsewhere, of deducting their reserves for excess-profits taxes. Now, the law in regard to excess profits is that such taxes shall be paid out of profits as determined. Therefore the true profit is the amount before making any provision for these excess-profits taxes. Swift & Co. in 1917 announced broadcast throughout the country that their profits were $34,000,000, but they had arbitrarily deducted from their true profits a reserve of $10,000,000 to take care of excess-profits taxes. Now, properly from an accounting, technical point of view, their real profit was $44,000,000 at least. And all the packers do that. I have noticed that in their last annual statements they have followed the same procedure.

Senator NORRIS. Did you determine, or did you try to, and if you did try, did you determine or find out any evidence in regard to the expenses of those various institutions? For instance, can you tell us the salaries of the officials of the various packing institutions?

Mr. CHASE. I have those in my office at Chicago. I only remember one or two of them.

Senator NORRIS. Tell us those you remember.

Mr. CHASE. Well, Mr. Thomas M. Wilson receives $125,000.

Senator GRONNA. A year?

Mr. CHASE. Yes. And Mr. Valentine, of Armour & Co., receives $50,000, with $35,000 bonus, making $85,000. I think Mr. White, vice president of Armour & Co., receives the same figure. Young Mr. Morris, president of Morris & Co., receives $50,000, and then $25,000 more as president of one of the stockyard companies, making $75,000. And, as I say, we have the whole list in Chicago.

Senator NORRIS. Do you know what Mr. Swift gets?

Mr. CHASE. No; I don't remember. I think that, so far as their books show, they are rather nominal salaries—$25,000 or $50,000; not over that.

Senator NORRIS. Is $50,000 salary nominal?

Mr. CHASE. Why, in comparison with Mr. Wilson's salary, I should say it was nominal.

Senator NORRIS. Well, do you know what they expended in the way of expenses for looking after legislation in various places, if they spent anything?

Mr. CHASE. I believe the commission has the facts in regard to these. I remember during my own work on the books of Armour & Co., finding an account which—it had to do with legal fees for attorneys in a number of States in the Union, the capital cities of those States. The item as it appeared on the ledger was "services introducing bills," watching the legislature, etc. Those items were not large. They ran from $500 to $1,500. I don't suppose the whole account amounted to more than $50,000. But that was only a very small item of their legislative outgo.

Senator NORRIS. Do you know anything—for instance, Mr. Veeder, who seemed to be looking after the interests of all the packers, do you know what he got?

Mr. CHASE. I haven't any idea. I don't think the salary was reported by Swift & Co. on our salary schedules. I think the commission has some figures as to his total office expense.

Senator NORRIS. You don't know what this is?

Mr. CHASE. No; I do not.

Senator NORRIS. Now, Mr. Chase, is there anything else that you think of that would throw any light on this investigation that the committee is making?

Mr. CHASE. Of course, I don't feel that the profit regulation of the Food Administration has amounted to anything, so far as regulating the packers' profit is concerned. At the time that I took charge of those records and accounts under Mr. Cotton I made a report to Mr. Cotton soon after the packers had sent in their first period returns for the months of November and December, 1917, and in that report I made some estimates—which since have been substantiated by the final year's results—that the packers were being allowed to make on their whole business, under the Food Administration regulation, as much as they had made in the year 1917, which was the most profitable year in their entire history. Now, it may be that the regulation prevented them from making more than that which they made in the most profitable year in their entire history, but it certainly did not operate to reduce the profit in any way, and I do not feel that this regulation as it has been carried out by the Food Administration has helped the public or the consumer. Perhaps rather the contrary, because the packers have announced publicly that they were being regulated, which, I suppose, tended to satisfy the public that profits actually were cut down.

Now, in justice it must be said that the packers have not equaled—or they don't appear to have equaled—their profit allowance, but from the standpoint of the profit allowed the regulation was nothing more than a comedy, in my estimation.

Senator NORRIS. As I understand you, the regulation of the Food Administration, allowing them a certain profit on different classes of business, in realty did not amount to anything?

Mr. CHASE. That is what I should conclude; yes.

Senator NORRIS. In other words, that as far as those regulations were concerned their profit was unlimited?

Mr. CHASE. No; it was not unlimited, but it was way up to the most they had ever made in their previous history.

Senator GRONNA. Wasn't it more than that? According to Mr. Cotton's own statement before this committee, he said that the packers—he allowed the packers to make a profit, or, rather, to include their borrowed money as well as capital stock. Now, did the packers do that before the Food Administration took charge of it?

Mr. CHASE. Well, that was simply for the purpose of determining a rate upon which to base the 9 per cent; that is, the 9 per cent on the capital stock, plus surplus, plus borrowed money.

Senator GRONNA. Plus bonds?

Mr. CHASE. Yes; plus bonds.

Senator GRONNA. Plus everything?

Mr. CHASE. Plus everything but accounts payable.

Senator GRONNA. Well, wouldn't that permit them to make more money than, in fact, what the chairman has stated—an unlimited amount?

Mr. CHASE. Well, it allowed them to make a good deal more than 9 per cent on their own money, and a great deal more than 9 per cent on capital stock.

Senator GRONNA. They might borrow a good deal more than their capital stock, and the more money they could borrow the more money they could make?

Mr. CHASE. Yes; and in that connection the statement made by one of the officials of the Food Administration is rather interesting. He told my assistant, Mr. Tator, at the time these regulations were under consideration that they were going to base this percentage—to include borrowed money, because the public effect would be to make the rate appear lower.

Senator NORRIS. What member of the Food Administration was that?

Mr. CHASE. I think it was Mr. Durand. Mr. Tator would have to tell you about that.

Senator GRONNA. The figures you have given the committee with reference to profits, are they net or are they gross?

Mr. CHASE. They are net profits.

Senator GRONNA. And from the figures you have given us here this afternoon it indicates that during the war period and during these regulations the packers have made more money than they did before the war, with the exception of that one year, 1915, the Cudahy Co.?

Senator NORRIS. Yes; and that only applied to one packer.

Senator GRONNA. Yes.

Mr. CHASE. Taking the total, I think you might summarize it by saying they made three times as much on their net worth during the war years as they made before the war.

Senator NORRIS. And if you would figure it on their actual capital stock it was a good deal more than that.

Mr. CHASE. Well, we can't tell, because of these new issues that have come in all the time.

Mr. McCUMBER. Mr. President, I regret very much that, through interruptions, those who have spoken since 10 o'clock this morning had their addresses so elongated that it was impossible for anyone else to get the floor who desired to speak more than five minutes upon the bill.

I wish I could satisfy myself that this bill placing one of the greatest industries of the country under the management of a commission will inure to the benefit of the stock growers and the ultimate consumers in the United States. When I recall the earnest efforts of my colleague, during all the time that he served in the House and in the Senate, to subserve the interests of the agricultural and stock-raising industries of the country I find it very difficult to disagree with his conclusions upon any one of these matters. The difference between us, however, is not in reference to the evils to be eliminated or sought to be eliminated by the bill. They are rather of a fundamental character. The question with me is not whether certain evils exist, but the method of dealing with them; whether we should meet them by a law declaring the evils to be unlawful and then prosecuting offenders, or whether we should create a new commission to control and direct the business itself.

The slogan during the campaign and that of the President elect himself was "More business in government and less gov-

ernment in business." I agree with that Harding philosophy. I think it was one of the great elements that entered into and swelled his victory in the campaign. People were tired of being governed by bureaus and by commissions. They were suffering from their operations in the operation of railways, shipping, and other industries. When I recall the effect of the control of our railways by the Government; when I recall the effect of the operation of our Shipping Board, the awful extravagance, the more than awful inefficiency that was exercised, I want to get away just as far as I can from commissions and go back to a government by law rather than a government by bureau, board, or commission.

Government control and operation of railways bankrupted every railway in the United States, increasing the cost of transportation to an unheard-of extent, is primarily responsible for the present excessive cost of living. Government interference in the operation of coal mines has raised the price of coal beyond the reach of the public to pay, and except for providential interference in the form of a mild winter the suffering of the public would have been shocking. I insist the right, the logical, way to effect a remedy is to declare by law that any wrongful act shall be a crime, and then punish the violation. I would govern business by law and not turn it over to a commission to manage, knowing that their management is never efficient or economic.

We have a right to declare every one of the offenses mentioned in the bill to be unlawful and punish the perpetrator. I think they are already so declared under the Trade Commission, and we already have a right to punish them and put a stop to them. I believe that is the only proper way to reach the offenses. We should govern these packers by law and not attempt to govern them by managing their business by a commission.

I wish I had the time to go into a discussion of this matter. I find that I am sustained in my views by the stock raisers of my own section of the country. The western half of the State of North Dakota is engaged to a great extent in stock raising, and I have found nearly all of those so engaged are against any proposition to create a commission to control the business. My time having about expired, I must ask that their suggestions, showing their opposition to this method of meeting the situation, their petitions and resolutions asking me to vote against this bill be printed in the RECORD as a part of my remarks.

Following these letters, and there are many others, a delegation of stock raisers and members of the Stock Growers' Association of Western North Dakota, consisting of Mr. Baird, Mr. Burnett, and Mr. Richards, came to Washington and vigorously protested against the enactment of this bill into law.

The VICE PRESIDENT. Without objection, it is so ordered.

The matter referred to is as follows:

Resolutions opposing Senate bill 3944.

To the Hon. PORTER J. MCCUMBER,
United States Senate, Washington, D. C.:

We, the undersigned stockmen and members of the North Dakota Stock Growers' Association of Western North Dakota, respectfully petition that you use your influence in opposition to the Senate bill 3944, known as the Gronna bill, as we consider said bill detrimental to the best interests of the live-stock industry throughout the United States.

W. L. Richards, secretary North Dakota Live Stock Association, Dickinson, N. Dak.; D. C. Beck, H. C. Christenson, Fred Christensen, C. S. Lee, Thos. S. Johnson, Geo. T. Grayson, Wyeth Tuthill, Kildeer, N. Dak.

—

MEDORA, N. DAK., *September 9, 1919.*

Hon. PORTER J. MCCUMBER,
United States Senate, Washington, D. C.:

Sentiment throughout this county is against Kendrick bill.

G. E. BURGESS.
H. C. SHORT.

—

OBJECTIONS TO SENATE BILL 3944.

Objections to the above bill to create a Federal live stock commission from the live-stock producers' viewpoint:

The live-stock market just now is badly demoralized and prices are low. Any legislation in a new and untried field will tend to further demoralize it and continue the unsettled conditions now existing. What the live-stock producer wants is a restoration of confidence and the stabilizing of the industry.

This law is probably unconstitutional because it seeks to regulate private intrastate business not concerned in interstate business, and because it provides for the enactment, administration, and enforcement of the rules of the commission, which have the effect of laws, by the commission itself, which commission also will punish violations of its own orders. In other words, the commission is clothed with legislative, executive, and judicial powers. This will mean that the law will be resisted and tested in the courts, with resultant delays of two or three years. This litigation will unsettle market conditions and curtail the live-stock industry.

Even if the creation of this commission is a good thing, on account of the unsettled conditions hereinbefore referred to, it should not be brought up now.

The live-stock producers in our State and business interests more or less dependent on live-stock producers are opposed to this bill because it puts the control of a highly developed, sensitive business under a political body not trained in the business, not interested in its efficiency, and not permanent.

The bill is socialistic, and our experience in our State is that such measures work to the detriment of the majority of the people and do not improve the industry sought to be affected.

—

SENTINEL BUTTE SADDLERY CO.,
Sentinel Butte, N. Dak., August 29, 1919.

Senator PORTER J. MCCUMBER,
Washington, D. C.

DEAR SENATOR MCCUMBER: As you know, the writer has been for many years one of the large stock growers of the State, and consequently vitally interested in all that pertains to the live-stock industry.

There are two bills now before Congress, known popularly as the Kenyon bill and the Kendrick bill, which, I believe, if enacted, would work serious injury to the stock business of the Nation. I believe the organization of the packing industry should be controlled, but it should not be destroyed. The interests of the packers, the stock growers, and the public are one. Just because the cost of living is high is no excuse for people to throttle a great industry to which all stockmen must look for a sale for their products.

Of the two bills I think the Kendrick bill is least objectionable. I know you have the interests of the stockmen at heart and would not willingly vote for the passage of a bill that would in any way work a grievance against them, or even against the packers, because if the packers are trammeled in their operations to no purpose, the cost must be borne by the stockmen and by the consumers.

Things will adjust themselves in the packing business, just as they will in every other business, if they are allowed to do so without undue interference. The country needs a little patience. Uneasiness and uncertainty are preying upon the live-stock business, due to the agitation produced by these two measures.

I believe you will give them careful consideration and vote "no" when the time comes.

I am, very sincerely, yours,

LEWIS F. CRAWFORD.

—

STINSON IMPLEMENT & FUEL CO. (INC.),
Grand Forks, N. Dak., August 18, 1919.

Hon. P. J. MCCUMBER, Senator,
Washington, D. C.

MY DEAR FRIEND: Senate bill 2202, introduced by Mr. KENYON, has been called to my attention. In going into this matter, feel that this bill is but a stepping-stone to radical socialism and will mean Government control and ownership of the basic industries of this country.

For one thing, the very idea of giving one man, namely, the Secretary of Agriculture, the power as outlined in this bill is, in my opinion, plain czarism. Do not feel that our Secretary of Agriculture is equipped or in position to become equipped to handle business of such magnitude as the packing industry of this country. Do not believe this legislation is necessary and can see nothing but harmful results to be derived therefrom.

Earnestly protest against the passage of any legislation such as this and sincerely hope that your views in this matter will coincide with mine and that you can conscientiously use your influence against the passage of this bill.

Your friend,

LESLIE STINSON.

—

THE MERCHANTS' NATIONAL BANK OF DICKINSON,
Dickinson, N. Dak., August 15, 1919.

Senator MCCUMBER,
Washington, D. C.

DEAR SENATOR: Inclosed find a petition signed by some of the stockmen in our country that oppose the Kenyon and Kendrick bills that are about to come before Congress.

Hoping that this may be of some use to you in the opposition of this legislation, I am,

Yours, truly,

W. L. RICHARDS.

—

We, the undersigned, producers and live-stock shippers of the Northwest, strongly object to the Kenyon, Kendrick, and like bills on the ground that Government control of packing plants, packers' refrigerator cars, and stockyards would retard the growing live-stock industry of the great Northwest. We know packers can not maintain a stable market for live stock without their refrigerator cars. We also know there has been an enormous improvement in the Stock Yards Co. in the way of service and permanent improvements since the packers took over the Stock Yards Co., compared with the previous private ownership. We want progress, not restriction in the production and marketing of live stock, also in the distribution of live-stock products from South St. Paul, Minn.

W. L. Richards, Dickinson, N. Dak.; Wilson Eyer, Dickinson, N. Dak.; Joe F. Parker, Dickinson, N. Dak.; Anton Armbrust, Dickinson, N. Dak.; John P. Berrmyer, Dickinson, N. Dak.; C. T. Langley, Dickinson, N. Dak.; M. L. McBride, Dickinson, N. Dak.; M. Byers, Dickinson, N. Dak.; Crosby Richards, Dickinson, N. Dak.; Max Hendrick, Dickinson, N. Dak.; Joseph P. Ziegler, Dickinson, N. Dak.; L. R. Baird, Dickinson, N. Dak.

—

THE MERCHANTS NATIONAL BANK OF DICKINSON,
Dickinson, N. Dak., August 5, 1919.

Hon. P. J. MCCUMBER,
Washington, D. C.

DEAR SIR: It has lately been brought to my notice that the Kenyon and Kendrick bills are to be brought before Congress in the near future. I have made a study of these bills and have found them, in my estimation as well as the estimation of most of the stockmen of this locality, to be very detrimental to the live-stock interests of the country.

There have been numerous petitions circulated opposing the bills. The number of signers among the stockmen have been great, which gives a good insight on the feeling of those interested.

Hoping that you are of the same opinion as the majority of the stockmen of this community and see fit to oppose the said legislation, I am,

Yours, truly,

W. L. RICHARDS.

NEW MEAT MARKET,
Wahpeton, N. Dak., August 11, 1919.

Senator MCCUMBER,
Washington, D. C.

HONORABLE SIR: I respectfully call your attention to the so-called Kenyon bill (S. 2202), which is now before our Congress for consideration, or which will soon be considered by that body.

I wish to enter a protest against the passage of this bill at this time, and to ask that you use your best efforts to insure its defeat.

From information gained through a reading of the bill, it appears that the purpose of the measure is to place under governmental control all of the various branches of the meat business, both wholesale and retail, entirely upsetting conditions with reference thereto.

I have a large investment at the present time in a retail-meat business and have fully equipped myself to meet the demands of the trade in this locality. I am now receiving prompt and efficient service from the larger packing concerns in the matter of all goods ordered from them, and the arrangements which I have made with these concerns is proving very satisfactory both to myself and to my patrons. Further, I have at considerable expense to myself installed the necessary facilities for handling such meats as I slaughter myself and have complied fully with all laws relating to sanitation in the preservation of meats, etc.

It is apparent that all these conditions will be changed should the proposed bill be enacted into law. Better service will not be had; a better quality of meats will not be given the public; and the service, especially with reference to the refrigerator facilities, will be materially lessened. It will mean a great financial loss to me and to others similarly situated to be compelled to dispose of our equipment within the time specified in the bill, with practically no prospective purchasers to be had.

The operation of this bill, should it be enacted into law, will work a great injustice upon all retail dealers in meats and farm products; so great, in fact, that many of us will be compelled to close our places of business, while, on the other hand, the public will receive a service less prompt, less efficient, and less satisfactory.

I respectfully request that you carefully investigate this bill, and I am sure that you will recognize its pernicious purpose and will not hesitate to use your vote and influence to secure the defeat of this measure.

Yours, truly,

FRANK BENDA.

AVERY CO.,
Grand Forks, N. Dak., August 12, 1919.

Hon. PORTER J. MCCUMBER,
United States Senate, Washington, D. C.

DEAR SIR: I have read a copy of the Kenyon bill (No. 2202) now before the Committee on Agriculture and Forestry of the United States Senate.

In our opinion, the proposed legislation contained therein is extremely radical. If this bill is passed in its present form, it appears to us that eventually it will mean Government ownership, and in view of our past experiences with the railroad, telephone, and telegraph companies, we feel that there is good reason for objection to this bill.

We hope you will use your influence against the passage of legislation of this character.

Yours, respectfully,

AVERY CO.,
CASPER O. OLSON, *Manager.*

THE MERCHANTS NATIONAL BANK OF DICKINSON,
Dickinson, N. Dak., August 27, 1919.

Hon. P. J. MCCUMBER,
Washington, D. C.

DEAR SENATOR: Yours of the 18th regarding the Kenyon and Kendrick bills received, and I am much obliged to you for your assistance in this matter, as I feel this is no time for any troubles which things of this kind might bring out.

I feel that the live-stock industry in this part of the country and its upbuilding is due to the packing, cold storage, and refrigerator cars which have been inaugurated by the larger packing industries in the market.

Yours, truly,

W. L. RICHARDS.

P. S.—If you think that my presence before this committee on these bills would be of any benefit, I will gladly come.

WAHPETON, N. DAK., *August 11, 1919.*

Senator MCCUMBER,
Washington, D. C.

HONORABLE SIR: I respectfully call your attention to the so-called Kenyon bill, S. 2202, which is now before our Congress for consideration, or which will soon be considered by that body.

I wish to enter a protest against the passage of this bill at this time and to ask that you use your best efforts to insure its defeat.

From information gained through a reading of the bill it appears that the purpose of the measure is to place under governmental control all of the various branches of the meat business, both wholesale and retail, entirely upsetting conditions with reference thereto.

I have a large investment at the present time in a retail meat business and have fully equipped myself to meet the demands of the trade in this locality. I am now receiving prompt and efficient service from the larger packing concerns in the matter of all goods ordered from them, and the arrangements which I have made with these concerns is proving very satisfactory both to myself and to my patrons. Further, I have at considerable expense to myself installed the necessary facilities for handling such meats as I slaughter myself, and have complied fully with all laws relating to sanitation and the preservation of meats, etc.

It is apparent that all these conditions will be changed should the proposed bill be enacted into law. Better service will not be had, a better quality of meats will not be given the public, and the service, especially with reference to the refrigerator facilities, will be materially lessened. It will mean a great financial loss to me and to others similarly situated to be compelled to dispose of our equipment within the time specified in the bill, with practically no prospective purchasers to be had.

The operation of this bill, should it be enacted into law, will work a great injustice upon all retail dealers in meats and farm products; so great, in fact, that many of us will be compelled to close our places of business, while, on the other hand, the public will receive a service less prompt, less efficient, and less satisfactory.

I respectfully request that you carefully investigate this bill and I am sure that you will recognize its pernicious purpose and will not hesitate to use your vote and influence to secure the defeat of this measure.

Yours, truly,

J. P. DIETZ.

BANGS, HAMILTON & BANGS,
Grand Forks, N. Dak., October 20, 1919.

Hon. P. J. MCCUMBER,
United States Senate, Washington, D. C.

DEAR SENATOR: My attention was attracted this day by another scare headline from the Federal Trade Commission anent the packers, and I wondered what the animus.

When men carrying on a reputable business and rendering valuable assistance to the Government in time of war are so assailed as in this case without tangible proof or cause, about the only deduction is either personal pique or deliberate attempt to tear down a Government prop and continuance of the assault after peace, points to personal pique.

Thinking of these things, my mind turned to the so-called Kenyon bill, of which I had intended writing you some time ago.

I do not believe in imposing personal views on legislators when dealing with purely legislative matters, but the matters involved in the Kenyon bill are not confined to questions of commercial policy, neither are they strictly legislative.

The effect of the bill is not limited to packers, but goes to a vital and fundamental principle of government.

It is paternalistic in the extreme, and I can not refrain from raising my voice in protest when our country that has developed beyond all conception in every phase of commercial life on the principle of free competition and individualism is confronted with the deadening blight of paternalism.

The late Justice Brewer once said:

"The paternal theory of government to me is odious. * * * The utmost possible liberty to the individual and the fullest possible protection to him and his property is both the limitation and the duty of government."

The quotation expresses in apt language the views of the great majority of the thinking men of to-day.

I trust you may see your way clear to use your great influence against any such socialistic doctrine as this act imposes.

This particular act of which I am writing is, however, not only paternalistic and socialistic but is in itself decidedly unfair to the business interests toward which it is directed.

The business as now carried on is to be broken up in a claimed effort to protect the public, but in what is in reality an attempt to stifle because of its size.

The continued holding of a license depends upon regulations of the act itself that seem detrimental rather than beneficial, and in addition on regulations to be made by the Secretary of Agriculture, and finally upon the belief of a commissioner of foodstuffs who may not know as much about the packing industry as a lawyer about shipping.

If there were no other questions involved the power vested in the commissioner of foodstuffs is enough to damn the bill. Even the circuit court of appeals can not give relief unless the order of the commissioner is "unsupported by evidence," etc. In other words, the life of a great business depends upon the whim of some political appointee not necessarily even remotely acquainted with the business, apt to be moved by political emotions, whose order is unimpeachable if supported by any evidence.

I have no doubt but that many theorists honestly believe that the public good would be subserved by placing all business, especially if it is large and successful, under strict governmental control.

I have no doubt but that some people feel that the present high cost of living is traceable to the "big business interests," of which we read so much, completely overlooking the cost of labor and increased profit to the producer, two items of increased cost that outrank all the balance.

I have no doubt there are men who really believe that the high cost of living can be reduced by legislation and hope to see a material reduction in their expenses when the packers who now sell at a profit that amounts to less than one-half of 1 cent per pound, dressed meat (and less than 8 per cent on capital), are forced by legislation to reduce that profit.

It seems to me that very little investigation must show the fallacy of their beliefs.

England once tried to regulate the price of practically all foodstuffs by restrictive legislation, but finally repealed the statutes against forestalling, engrossing, and regrating with a preamble reciting, "Whereas it hath been found by experience that the restraints laid by several statutes upon the dealing in corn, meal, flour, cattle, and sundry other sorts of victuals by preventing free trade in said commodities have a tendency to discourage the growth and to enhance the price of the same," etc.

I know how history repeats itself, but let us put off the repetition of the mistakes as long as possible.

The Kenyon bill I consider one of the mistakes and most respectfully urge its defeat.

Sincerely,

TRACY R. BANGS.

THE AMENIA AND SHARON LAND CO.,
Amenia, N. Dak., August 16, 1919.

Hon. P. J. MCCUMBER,
United States Senate, Washington, D. C.

DEAR SIR: One of the Swift representatives whom we buy of has been in asking my influence to aid in defeating the Kenyon bill; and while I am not accustomed to meddling in other people's business, it seems to me that there is an important general principle involved here, and I know you like to get as wide an expression of opinion as possible.

I refer to the hampering of these big (and highly efficient and useful) organizations, with a view to facilitating competition by smaller, less efficient, and less useful corporations. Beginning with the Roosevelt régime, we have had a deluge of these bills. Some of them were excellent, in my opinion. However, if you will accept a layman's point of view, I believe that most of them have been propagated not to benefit the public but to please the public. There is a vast difference. Such a bill I consider the Kenyon document.

I am a firm believer in Federal restriction up to a reasonable point. We have seen the results of unrestricted business in our own Standard Oil. We can also see the results of "unrestricted restriction" all about us; for instance, in Russia. Let us admit frankly, though, that

the United States of America owes much of its marvelous industrial acceleration to its big businesses, including the packers and Standard Oil, and let us be reasonable.

Very truly, yours, E. W. CHAFFEE.

Mr. WALSH of Montana. Mr. President, my State is one of the greatest stock-raising States in the Union, and obviously our people are very much interested in the pending measure. The time-rule limit prevents me from entering into any discussion of the reasons which impel me to this belief. The subject has been agitated extensively for years, and very earnest demand has gone out, particularly from the smaller stock raisers, in favor of some kind of Government regulation, at least of the stockyards business.

But I rose particularly to say a word with respect to some objections that have been made touching the constitutionality of the measure. Of course, we have been accustomed to listen to objections upon constitutional grounds to almost every measure which passes outside of the usual line of legislation. I have before me a pamphlet, doubtless sent to every member of the Senate, entitled "Analysis of the bill creating a Federal live-stock commission and a statement on behalf of the packing industry by the Institute of American Meat Packers." The pamphlet raises the question of the constitutionality of the measure, and particularly because of the important provision thereof, which, it seem, is void for uncertainty. I quote as follows:

Section 12 provides that it shall be unlawful for any packer "to engage in any unfair, unjustly discriminatory, or deceptive practice or device in commerce." No definition is given of any of these descriptive words. It is left entirely for the commission to determine according to its judgment, opinion, taste, whim, or caprice what under any given circumstances may constitute a "practice" or "device" of the kind inhibited.

We are all familiar with that line of argument, because it was indulged in without limit and without end in connection with the bill to create the Federal Trade Commission. Indeed, the bill before us in its essential features transfers to a commission to be created by it some of the most important functions of the Federal Trade Commission. The bill provides that it shall be unlawful for any packer "to engage in any unfair, unjustly discriminatory, or deceptive practice or device in commerce, or in any deceptive practice or device to cheat or defraud in commerce," and then provision is made for a hearing as to whether any practices of that character do exist, and for their suppression if they are found to exist.

The real question is exactly the same, so far as the legal aspect is concerned, as that which was presented by the bill for the creation of the Federal Trade Commission. That has been determined past all controversy by two decisions of the circuit court of appeals. It came first before the circuit court of appeals for the seventh circuit in the case of Sears, Roebuck & Co. versus Federal Trade Commission. Decision was rendered, in which all the judges concurred as to that, by Judges Baker, Alschuler, and Carpenter.

I forbear from reading at length from the opinion and content myself with quoting simply from paragraph 3 thereof, as follows:

But such a construction of section 5, according to the petitioner's urge, brings about an unconstitutional delegation of legislative and judicial powers to the commission. Grants of similar authority to administrative officers and bodies have not been found repugnant to the Constitution. (Butterfield *v.* Stranahan, 192 U. S., 470; Union Bridge Co. *v.* United States, 204 U. S., 365; Pennsylvania Railroad Co. *v.* International Coal Co., 230 U. S., 184; National Pole Co. *v.* Chicago & Northwestern Railway Co., 211 Fed., 65.)

Then follows a discussion by the court of the questions involved. I read:

With the increasing complexity of human activities many situations arise where governmental control can be secured only by the "board" or "commission" form of legislation. In such instances Congress declares the public policy, fixes the general principles that are to control, and charges an administrative body with the duty of ascertaining within particular fields from time to time the facts which bring into play the principles established by Congress.

The decision thus rendered by that court was concurred in in the case of the National Harness Manufacturers' Association against the Federal Trade Commission, a decision by the circuit court of appeals for the sixth circuit, Judges Knappen, Denison, and Donahue sitting, all circuit judges, and all concurring in the opinion. I read briefly as follows:

The constitutionality of the act is assailed, first, as assuming "to combine legislative, executive, and judicial powers and functions and to confer them upon one and the same administrative body, contrary to Articles I, II, and III of the Constitution, and because it assumes to authorize the commission, which is ostensibly an administrative body, to deprive persons of their property without due process of law, contrary to the fifth amendment to the Constitution.

This proposition—

The court says—

is, to our minds, without merit. Congress plainly has power—

Plainly has power—

to declare unfair methods of competition unlawful and to require that their practice cease. This Congress has done by the act in question.

The PRESIDING OFFICER (Mr. ROBINSON in the chair). The time of the Senator has expired.

Mr. WALSH of Montana. I ask that both of the opinions to which I have referred may be printed in the RECORD.

The PRESIDING OFFICER. Without objection, leave will be granted. The Chair hears no objection.

The opinions referred to are as follows:

In the United States Circuit Court of Appeals for the Seventh Circuit. No. 2659. October term, 1918, April session, 1919.

Sears, Roebuck & Co., petitioner, *v.* Federal Trade Commission, respondent. Original petition to review order of Federal Trade Commission.

Before Baker and Alschuler, circuit judges, and Carpenter, district judge.

Baker, circuit judge, delivered the opinion of the court:

This is an original petition to review an order entered by the respondent, the Federal Trade Commission, against the petitioner, Sears, Roebuck & Co., a corporation, commanding the petitioner to desist from certain unfair methods of competition in commerce. Respondent's order was based on its complaint, filed on February 26, 1918, on the petitioner's answer, and on a written stipulation of facts. Procedure before the commission and also before this court on review is prescribed in section 5 of the act to create a Federal Trade Commission, approved on September 26, 1914. Respondent's authority over the subject matter of its order is derived from the following provision in the same section: "Unfair methods of competition in commerce are hereby declared unlawful." Section 4 is a dictionary of terms used in the act. "Commerce" means interstate or foreign commerce; but the general term, "unfair methods of competition," is nowhere defined specifically, nor is there a schedule of methods that shall be deemed unfair.

In its complaint respondent averred that petitioner is engaged in interstate and foreign commerce, conducting a "mail-order" business; that petitioner for more than two years last past has practiced unfair methods of competition in commerce by false and misleading advertisements and acts, designed to injure and discredit its competitors and to deceive the general public, in the following ways:

1. By advertising that petitioner, because of large purchases of sugar and quick disposal of stock, is able to sell sugar at a price lower than others offering sugar for sale.

2. By advertising that petitioner is selling its sugar at a price much lower than that of its competitors and thereby imputing to its competitors the purpose of charging more than a fair price for their sugar.

3. By selling certain of its merchandise at less than cost on the condition that the customer simultaneously purchase other merchandise at prices which give petitioner a profit on the transaction, without letting the customer know the facts.

4. By advertising that the quality of merchandise sold by its competitors is inferior to that of similar merchandise sold by petitioner, and that petitioner buys certain of its merchandise in markets not accessible to its competitors and is therefore able to give better advantages in quality and price than those offered by its competitors.

Petitioner extensively circulated the following advertisements, among others:

"We can afford to give this guaranty of a 'less than wholesale price' because we are among the largest distributors of sugar, wholesale or retail, in the world. We sell every year 35,000,000 pounds of sugar. And buying in such vast quantities, and buying directly from the refineries, we naturally get our sugar for less money than other dealers.

"For instance, every grocer carries granulated sugar in stock, but does he tell you which kind? There are two kinds—granulated cane sugar and granulated beet sugar—and they look exactly alike. Some people prefer the one and some the other. But beet sugar usually costs less than cane sugar, so if you are getting beet sugar you should pay less for it. Do you know which kind you are getting and which you are paying for?

"Our teas have a pronounced, yet delicate, tea flavor, with an appealing fragrance, because we spare neither time nor expense to get the very best the greatest tea gardens of the world can produce.

"First, because of the difficulty of getting in this country the exact character and flavor of certain teas, we do our own importing and critically test every tea. Our representative goes to the various tea-growing countries and makes the selection in person. Then the greatest care is taken to get only first-crop pickings from upland soil.

"Also, by buying direct from the tea gardens, while the crops are being harvested, we are able to have them always perfectly fresh.

"It would be natural for you to conclude that all this care in buying and selecting would make our teas very high in price, but in reality our prices are unusually low for such high quality. Here is a reason: By buying direct from the tea gardens we cut out the middle-man's profit.

"Over land and sea, from the greatest coffee regions in the world, we bring you the choicest of the crop, and make it possible for you to have that fresh, savory, and fragrantly tempting cup of coffee for your breakfast. You see, we buy direct from the best plantations in the world. We get the pick of the crop—upland coffees from rich, healthy soil and growers of unquestioned experience and skill. We buy enormous quantities and pay cash, thus making it possible to offer our customers the very best coffees at very low prices."

Petitioner's sales of sugar during the second half of 1915 amounted to $780,000, on which it lost $196,000. Petitioner used sugar as a "leader" ("You save 2 to 4 cents on every pound"), offering a limited amount at the losing price in connection with a required purchase of other commodities at prices high enough to afford petitioner a satisfactory profit on the transaction as a whole, without letting the customer know that the sugar was being sold on any other basis than that of the other commodities. Petitioner obtained its sugar in the open market from refiners and wholesalers. Competitors got their sugar from the same sources, of the same quality, and at the same price. Sugar is a staple in the market. Price concessions upon large purchases are unobtainable. From the facts respecting petitioner's methods of advertising and buying and selling sugar respondent found, and properly so in our judgment, that petitioner intentionally injured and discredited its competitors by falsely leading the public to believe

that the competitors were unfair dealers in sugar and the other commodities which petitioner was offering in connection with sugar.

Petitioner purchased 75 per cent of its teas from wholesalers and importers in the United States. The remainder it purchased through its representative Peterson in Japan; but there was no proof that Peterson made or was qualified to make "selections in person" or "first-crop pickings from upland soil." All of petitioner's coffees were purchased from wholesalers and importers in the United States. Respondent found that petitioner's advertisements of teas and coffees were false and designed to deceive the public and injure competitors.

By the order, issued on June 24, 1918, petitioner was commanded to desist from:

"(1) Circulating throughout the States and Territories of the United States and the District of Columbia catalogues containing advertisements offering for sale sugar, wherein it is falsely represented to its customers or prospective customers of said defendant or to customers of competitors or to the public generally, or leads them to believe, that because of large purchasing power and quick-moving stock, defendant is able to sell sugar at a price lower than its competitors.

"(2) Selling, or offering to sell, sugar below cost through catalogues circulated throughout the States and Territories of the United States and the District of Columbia among its customers, prospective customers, and customers of its competitors.

"(3) Circulating throughout the various States and Territories of the United States and the District of Columbia, among customers, prospective customers, and customers of its competitors, catalogues containing advertisements representing that defendant's competitors do not deal justly, fairly, and honestly with their customers.

"(4) Circulating throughout the various States and Territories of the United States and the District of Columbia, among customers, prospective customers, or customers of its competitors, catalogues containing advertisements offering for sale its teas, in which said advertisements it falsely stated that the defendant sends a special representative to Japan who personally goes into the tea gardens of said country and personally supervises the picking of such teas.

"(5) Circulating through the various States and Territories of the United States and the District of Columbia, among customers, prospective customers, or customers of its competitors, catalogues containing advertisements offering for sale its coffees, in which it falsely stated that the defendant purchases all of its coffees direct from the best plantations in the world."

I. Petitioner insists that the injunctional order was improvidently issued because, before the complaint was filed and the hearing had, petitioner had discontinued the methods in question and, as stated in its answer, had no intention of resuming them. For example, no sugar offers of the character assailed were made after August, 1917. But respondent was required to find from all the evidence before it what was the real nature of petitioner's attitude. It was permissible for respondent to take judicial notice of the Government's war-time control of sugar sales and consumption. It was also proper to note that petitioner was contending (and still contends) that the act is void for indefiniteness, that the act is unconstitutional, and that the act, even if valid, under any proper construction has not been infringed by petitioner's practices. In Goshen Manufacturing Co. *v.* Myers Manufacturing Co. (242 U. S., 202), which was a suit for infringement of a patent, the defendant company averred and introduced evidence to prove that six months before the bill was filed and with notice to complainant it had sold its factory, wound up its business, and had no intention of resuming. But throughout the intervening period and also in the answer to the bill the defendant company was attacking the validity of the patent and the right of the complainant to compel desistance. This conduct was held to be such a continuing menace as to justify the maintenance of the bill. So here, no assurance is in sight that petitioner, if it could shake respondent's hand from its shoulder, would not continue its former course.

II. Petitioner urges that the declaration of section 5 must be held void for indefiniteness unless the words "unfair methods of competition" be construed to embrace no more than acts which on September 26, 1914, when Congress spoke, were identifiable as acts of unfair trade then condemned by the common law as expressed in prior cases. But the phrase is no more indefinite than "due process of law." The general idea of that phrase as it appears in constitutions and statutes is quite well known; but we have never encountered what purported to be an all-embracing schedule or found a specific definition that would bar the continuing processes of judicial inclusion and exclusion based upon accumulating experience. If the expression "unfair methods of competition" is too uncertain for use, then under the same condemnation would fall the innumerable statutes which predicate rights and prohibitions upon "unsound mind," "undue influence," "unfaithfulness," "unfair use," "unfit for cultivation," "unreasonable rate," "unjust discrimination," and the like. This statute is remedial, and orders to desist are civil, but even in criminal law convictions are upheld on statutory prohibitions of "rebates or concessions" or of "schemes to defraud," without any schedule of acts or specific definition of forbidden conduct, thus leaving the courts free to condemn new and ingenious ways that were unknown when the statutes were enacted. Why? Because the general ideas of "dishonesty" and "fraud" are so well, widely, and uniformly understood that the general term "rebates or concessions" and "schemes to defraud" are sufficiently accurate measures of conduct.

On the face of this statute the legislative intent is apparent. The commissioners are not required to aver and prove that any competitor has been damaged or that any purchaser has been deceived. The commissioners, representing the Government as parens patriæ, are to exercise their common sense, as informed by their knowledge of the general idea of unfair trade at common law, and stop all those trade practices that have a capacity or a tendency to injure competitors directly or through deception of purchasers, quite irrespective of whether the specific practices in question have yet been denounced in common-law cases. But the restraining order of the commissioners is merely provisional. The trader is entitled to his day in court, and there the same principles and tests that have been applied under the common law or under statutes of the kinds hereinbefore recited are expected by Congress to control. This prima facie reading of legislative intent is confirmed by reference to committee reports and debates in Congress, wherein is disclosed a refusal to limit the commission and the courts to a prescribed list of specific acts. (CONGRESSIONAL RECORD, 63d Cong., 2d sess., pp. 13, 18, 533, 12246.) And this interpretation is not affected by the subsequent adoption of the Clayton Act, October 15, 1914, condemning certain specific acts.

III. But such a construction of section 5, according to petitioner's urge, brings about an unconstitutional delegation of legislative and judicial power to the commission. Grants of similar authority to administrative officers and bodies have not been found repugnant to the Constitution. Butterfield *v.* Stranahan (192 U. S., 470); Union Bridge Co. *v.* United States (204 U. S., 365); Pennsylvania Railroad Co. *v.* International Coal Co. (230 U. S., 184); National Pole Co. *v.* Chicago & North Western Railway Co. (211 Fed., 65).

With the increasing complexity of human activities many situations arise where governmental control can be secured only by the "board" or "commission" form of legislation. In such instances Congress declares the public policy fixes the general principles that are to control, and charges an administrative body with the duty of ascertaining within particular fields from time to time the facts which bring into play the principles established by Congress. Though the action of the commission in finding the facts and declaring them to be specific offenses of the character embraced within the general definition by Congress may be deemed to be quasi legislative, it is so only in the sense that it converts the actual legislation from a static into a dynamic condition. But the converter is not the electricity. And though the action of the commission in ordering desistance may be counted quasi judicial on account of its form, with respect to power it is not judicial, because determination is only that which is embodied in a judgment or decree of a court and enforceable by execution or other writ of the court.

IV. In the second paragraph of the order petitioner is commanded to cease selling sugar below cost. We find in the statute no intent on the part of Congress, even if it has the power, to restrain an owner of property from selling it at any price that is acceptable to him or from giving it away. But manifestly in making such a sale or gift the owner may put forward representations and commit acts which have a capacity or a tendency to injure or to discredit competitors and to deceive purchasers as to the real character of the transaction. That paragraph should therefore be modified by adding to it "by means of or in connection with the representations prohibited in the first paragraph of this order, or similar representation."

Sufficient appears in this record and in the presentation of the case to warrant us in expressing the belief that petitioner's business standards were at least as high as those generally prevailing in the commercial world at the times in question, and that the action of the commission is to be taken rather as a general illustration of the better methods required for the future than a specific selection of petitioner of reproof on account of its conduct in the past.

Respondent is directed to modify its order as above stated; and in other respects the petition is—

Denied.

By Alschuler, Cir. J.:

In my judgment the order of the commission should be further modified by striking out the third paragraph, which relates to alleged representation that petitioner's competitors do not deal fairly and honestly with their customers. In so far as the sugar, coffee, and tea advertisements ascribe petitioner's asserted lower prices and superior qualities to quantity purchases and special facilities and advantages for inspection, selection, and purchasing, they would tend to negative any imputation upon competitors of unfair dealing with their patrons. I believe the charge of imputing to competitors unfair dealing with their patrons rests wholly on petitioner's so-called "Caveat Emptor" advertisement in its catalogue of March and April, 1916, wherein the public is cautioned in regard to white sugar, stating that some is cane and some beet sugar, alike in appearance, but the former usually higher in price; that petitioner plainly designates which of the two it offers, and the query is suggested, where else are goods so plainly described, and whether the customer gets elsewhere what he thinks he is buying. It seems to me that this does not amount to more than a statement or boast that petitioner, without being asked, describes the white sugars it proposes to sell, and the intimation is carried that competitors do not volunteer such description, but it is not suggested that they actually misrepresent the truth.

The facts before the commission appear by stipulation, and those concerning this advertisement, aside from the advertisement itself, are as follows:

"When Mr. A. M. Daly, the attorney in charge of the investigation in these proceedings, was in Chicago, in March, 1916, he submitted to Mr. A. V. H. Mory, chief chemist of Sears, Roebuck & Co., and Mr. Joseph Scott, manager of the grocery department, a copy of the advertisement entitled 'Caveat Emptor' hereinbefore mentioned, and hereto attached, and requested them to state their views as to this particular advertisement and what it meant. They stated that this advertisement was for the purpose of calling attention to the distinction between beet sugar and cane sugar and laying stress upon the point of the facilities that Sears, Roebuck & Co. have for marking everything plainly so that the customer would know better from description the exact nature of what he was buying. After this explanation, Mr. Daly went to his hotel. In a short time Mr. Mory called on him there and stated, in substance, that he had submitted the above-mentioned advertisement to Mr. A. H. Loeb, the vice president of Sears, Roebuck & Co., and that Mr. Loeb said that this course of advertising was unfair and unjust, and declared that it must be discontinued, and further that it was against the policy of the house to send out such advertisements. Thereupon, on March 28, 1916, Mr. A. V. H. Mory, chief chemist, wrote to the commission in part as follows: 'The young man who wrote this was in to-day, and I pointed out to him wherein he had made a mistake and acted against house policy. He promised to use the soft pedal on all references to the dealer in the future. He tells me that this is an angle that had not occurred to him. He had not thought of the write up in the light of a criticism of the dealer, so intent was he on pointing out that with our system of marking everything plainly and our facilities for knowing what we are selling, the customer would know better from our description the exact nature of what he was buying in the case of those things difficult to judge than if he had them placed before him—which, of course, is true.'"

But assuming, as did petitioner's vice president, that this advertisement does carry the imputation that competitors deal unfairly with their customers, under the circumstances indicated by the quotation, ought this advertisement to be the basis of a finding and order? The publication was in the catalogue for March and April, 1916. The complaint was filed nearly two years afterwards. The act authorizes the commission to proceed when it shall have reason to believe that unfair methods of competition are or have been used, "and if it shall appear to the commission that a proceeding by it in respect thereof would be of interest to the public." In a monitory proceeding such

as this seems to be it could hardly be said that it would be "of interest to the public" to predicate action on a transgression for which due amends had long before been made without remostest cause to believe there would be a repetition. To revive a stale advertisement of this nature which the advertiser immediately after the publication distinctly disavowed as having been unintentionally and inadvertently unfair to competitors, and ordered discontinued, without directly or indirectly repeating or renewing it for so long an interval, far from subserving the public interest, might, in my judgment, have the contrary tendency of raising an imputation of oppressive, or at least uncalled-for action, in predicating any proceeding or order on this advertisement.

Nor am I impressed with the authoritative relevancy here of decisions respecting injunctions. In a proceeding such as this, neither remedial nor punitive, decisions of courts respecting injunctional relief in equity are not more analogous than are common-law decisions defining unfair trade practices, arising out of controversies between individuals, as fixing thereby the limitation of the commission's authority or scope.

The suggested modification would necessitate corresponding modification of the commission's findings of facts, eliminating paragraphs Nos. 4 and 5 thereof. Paragraphs 2, 6, and 7 (as well as paragraphs 4 and 5) of the findings state the circulation of the several advertisements to have been in each case for "more than two years last past," indicating thereby the two years next before the date of the findings, which is June 24, 1918. This is in contravention of the stipulated fact that none of the advertisements were more recent than August, 1917—some of them even antedating the passage, September 24, 1914, of the Trade Commission act itself. These findings should, in my judgment, be modified to comply with the stipulated fact.

A true copy.

Teste:

_____,

Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

United States Circuit Court of Appeals, Sixth Circuit. No. 3289.

National Harness Manufacturers' Association of the United States of America, appellant, *v.* Federal Trade Commission of the United States of America, William P. Colver, John Franklin Fort, and Victor Murdock, Commissioners of the Federal Trade Commission of America, appellees. Petition to set aside order of the Federal Trade Commission.

Submitted November 8, 1920.

Decided December 7, 1920.

Before Knappen, Denison, and Donahue, circuit judges.

KNAPPEN, *Circuit Judge:*

Original petition under section 5 of the Federal Trade Commission act (Sept. 26, 1914, C. 311; U. S. Comp. Stat. 1916, secs. 8836 a, et seq.) to review an order of the commission requiring petitioner and its corespondents to cease and desist from certain alleged unfair methods of competition in interstate commerce.

The proceeding was brought against both petitioner, the National Harness Manufacturers' Association of the United States of America (hereinafter called the Harness Manufacturers' Association or the petitioner), its officers and the members of its executive committee by name, as well as about 20 local associations composing the membership of the Harness Manufacturers' Association, and the Wholesale Saddlery Association of the United States (hereinafter called the Saddlery Association), its officers and the members of its executive committee by name, and a large number of named persons, firms, or corporations composing the membership of that association. The order to cease and desist included both associations. The Saddlery Association asks no review of the commission's order.

The petitioner here assails that order on the grounds, first, that the Federal Trade Commission act is unconstitutional; second, that the commission had no jurisdiction in this particular case; and, third, that the order to cease and desist is not supported by the evidence.

1. The constitutionality of the act is assailed, first, as assuming "to combine legislative, executive, and judicial powers and functions and to confer them upon one and the same administrative body, contrary to Articles I, II, and III of the Constitution, and because it assumes to authorize the commission, which is ostensibly an administrative body, to deprive persons of their property without due process of law, contrary to the fifth amendment of the Constitution."

This proposition is to our minds without merit. Congress plainly has power to declare unfair methods of competition unlawful and to require that their practice cease. This Congress has done by the act in question. It with equal clearness has the power to authorize an administrative commission to determine (*a*) the question what methods of competition the given trader employs, and (*b*) provisionally the mixed question of law and fact whether such methods are unfair. These questions being determined against the trader, the administrative requirement to cease and desist prescribed by Congress follows as matter of course, but only provisionally. The commission's determination of these questions is not final. Not only does the statute give a right of review thereon upon application by an aggrieved trader to a circuit court of appeals of the United States, but the commission's order is not enforceable by the commission, but only by order of court. "It is for the courts, not the commission, ultimately to determine as matter of law" what the words "unfair methods of competition" include. (Federal Trade Commission *v.* Gratz, 40 Sup. Ct. Rep., 572, 575.) Throughout the proceedings, not only before the commission but before the court, the trader is given the right and opportunity to be heard. The act delegates to the commission no judicial powers, nor does it, in our opinion, confer invalid executive or administrative authority. (Buttfield *v.* Stranahan, 192 U. S. 470; Union Bridge Co. *v.* United States, 204 U. S. 364; Pennsylvania Railroad *v.* International Coal Co., 230 U. S., 184; Coopersville Co. *v.* Lemon, C. C. A., 6, 163 Fed., 145, 147, et seq.; National Coal Co. *v.* C. & N. W. Ry. Co., C. C. A., 7, 211 Fed. 65.) The criticism that the statute makes the commission both judge and prosecutor is too unsubstantial to justify discussion. The constitutionality of the act, against objections similar to those presented here, has recently been sustained by the Circuit Court of Appeals of the Seventh Circuit in a considered and persuasive opinion. (Sears, Roebuck & Co. *v.* Federal Trade Commission, 258 Fed., 307.) None of the petitioner's citations contain, in our opinion, anything necessarily opposed thereto. Upon this record we have no occasion to consider the construction or effect of the provision of the act which makes conclusive, if supported by testimony, the commission's findings as to facts as distinguished from conclusions of law, or of mixed fact and law. In saying so, however, we must not be understood to intimate that the provision referred to is invalid. (See the discussion in Buttfield *v.* Stranahan, supra, at pp. 494 et seq.; also in Union Bridge Co. *v.* United States, supra, at pp. 377–387; also in Coopersville Co. *v.* Lemon, supra, at pp. 147 et seq.)

The act is also assailed as violating the fourth amendment to the Federal Constitution, which protects against "unreasonable searches and seizures," which petitioner asserts are provided for by the so-called inquisitorial feature of section 9, in the declaration that "for the purposes of this act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against"; a provision whose enforcement is provided for by section 10, which subjects any person to fine or imprisonment, or both, "who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control."

Of this criticism it is enough to say that the provisions in question of sections 9 and 10 are not before this court. The commission has not attempted to exercise them. Section 9 otherwise contains complete provision for enforcing, by subpœna, the attendance and testimony of witnesses and the production of all documentary evidence relating to any matter under investigation. Beyond this the commission has not gone. That one attacking a statute as unconstitutional must show that the alleged unconstitutional feature injures him is settled by a long line of authorities, among which are Tyler *v.* Judges (179 U. S., 405, 409); Turpin *v.* Lemon (187 U. S., 51, 60, 61); Hooker *v.* Burr (194 U. S., 415, 419).

2. By section 5 of the Federal Trade Commission act the commission is given jurisdiction when it has reason to believe that "any person, partnership, or corporation has been or is using any unfair methods of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public." Section 4 of the act defines a corporation as "any company or association, incorporated or unincorporated," which either (a) is organized to carry on business for profit and has shares of capital or capital stock, or (b) is "without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members." The Harness Manufacturers' Association is a voluntary, unincorporated association and thus without capital stock. It is not itself engaged in business. Petitioner contends that it therefore is not within the act. But this contention overlooks the fact that the association is not the only one proceeded against; but that its officers and the members of its executive committee, as well as its membership generally, are included in the proceedings as parties and made subject to the commission's order. The language of the act affords no support for the thought that individuals, partnerships, and corporations can escape restraint, under the act, from combining in the use of unfair methods of competition, merely because they employ as a medium therefor an unincorporated, voluntary association, without capital and not itself engaged in commercial business. The order may be enforced by reaching the officers and members, personally and individually. A voluntary association, having many members, may be brought into court by service on its officers and such of its members as are known and can be conveniently reached, sufficient being served to represent all the diverse interests. Evanson *v.* Spalding (C. C. A., 9; 150 Fed. 517). Among the cases under the antitrust act which have enforced the liability of individual members for acts in violation of the statute, although done through a voluntary, unincorporated association, are Loewe *v.* Lawlor (208 U. S., 274); Dowd *v.* United Mine Workers of America (C. C. A., 8; 235 Fed., 1, 5, 6); and (apparently) Eastern States Lumber Co. *v.* United States (234 U. S., 600). These cases we think present a satisfactory analogy to the instant case.

The contention that the Harness Manufacturers' Association is not engaged in commerce is answered by the consideration, first, that many of its members are so engaged, and, second, that interstate commerce is claimed to have been directly affected by the alleged unfair methods of competition. Loewe *v.* Lawlor, supra; Eastern States Lumber Co. *v.* United States, supra; Nash *v.* United States (229 U. S., 373, 379). The objection that the public is not interested in the activities of the association is answered by the fact that if the commission's findings are to be accepted, trade conditions in the harness and saddlery trade have been substantially affected by the methods of competition in question. This subject will more fully appear by consideration of the nature and effect of the commission's findings.

3. The harness and saddlery trade consists broadly of three divisions: (a) Manufacturers of saddlery hardware, harness goods, and horse furnishing goods; (b) wholesalers and jobbers who buy the last-mentioned classes of goods from the manufacturers and themselves manufacture harness in wholesale quantities, selling both classes of products to the retailer; (c) retail harness dealers who sell saddlery goods at retail and to a small extent manufacture harness.

The commission's findings of fact, so far as now important, may be thus summarized: Prior to the organization of the Saddlery Association it was the general custom for accessory manufacturers to sell direct to retailers; and in large and important sections of the United States the wholesale and retail saddlery business has long been conducted as one operation. The Harness Manufacturers' Association is a voluntary, unincorporated association, its membership being composed largely of city and district associations in various cities throughout the States of the Union, the membership of these associations being composed of concerns engaged in manufacturing and selling harness and saddlery goods at retail, and who purchase their supplies of harness and saddlery goods largely from wholesalers and jobbers in interstate commerce, including members of the Saddlery Association. The membership of the Saddlery Association, which comprised the greater part of the wholesale saddlery trade of the United States, consisted of persons and concerns engaged in selling at wholesale harness and saddlery goods in interstate commerce throughout the various States and Territories of the United States to retail dealers, both members and nonmembers of the Harness Manufacturers' Association, and in direct competition with other persons or organizations similarly engaged, its declared policy being (at variance with the condition above set forth) to promote a system of trade by which the manufacturers should sell to jobbers only, the jobbers to the retailers only, and the retailers alone direct to consumers; that the Saddlery Association accordingly adopted and established a rule that concerns doing a combined and closely affiliated

wholesale and retail business were not eligible to new admission into the Saddlery Association (although some of its old members were still, in various parts of the United States, doing a combined wholesale and retail business), as well as a policy that such concerns were not entitled to recognition as legitimate jobbers, and that the adoption of such rule and policy were brought about in part by the influence and pressure, and in response to the overtures, of the Harness Manufacturers' Association.

The commission further found that the officers, committees, and members of the Harness Manufacturers' Association and of the Saddlery Association have actively cooperated to establish the principle that a combined and closely affiliated wholesale and retail business was not a legitimate wholesale business (it is to be noted that one of the objects of the Harness Manufacturers' Association, as stated in its constitution and by-laws, is "to protect the harness dealers from the unjust sale of goods by wholesale dealers direct to consumers"); that the secretary of the Saddlery Association has attempted to prevent accessory manufacturers from recognizing as legitimate jobbers wholesalers whose names were furnished by the Harness Manufacturers' Association to the Saddlery Association, as complained of by retailers, for competing with them; and that the Harness Manufacturers' Association has used its influence with the Saddlery Association to prevent the admission of specific concerns to membership in the latter association and the recognition of such concerns as legitimate jobbers. The commission further found that the Harness Manufacturers' Association has requested and secured the cooperation of members of the Saddlery Association in a refusal to sell to mail-order houses, hardware stores, general stores, and other competitors of retail harness manufacturers not recognized by the Harness Manufacturers' Association as legitimate; that the latter has refused the privilege of associate membership to accessory manufacturers and jobbers who sell to mail-order houses, establishing, however, an associate membership restricted to manufacturers and jobbers who do not sell to consumers and to mail-order houses, and who are otherwise in harmony with the policy of the association, and issuing credentials thereof to the traveling salesmen of associate members and urging and encouraging the affiliated retailers to withdraw and withhold patronage from concerns whose salesmen were not so equipped; and have induced the members of the Saddlery Association to use their influence with the accessory manufacturers not to sell to mail-order houses; and that by reason of refusals of accessory manufacturers, due to objections of the Saddlery Association, to recognize as jobbers certain competitors of members of that association, such competitors have been forced to buy from the Saddlery Association at prices higher than charged by manufacturers to recognized jobbers. The commission further found that, as a result of the opposition of the Harness Manufacturers' Association to sales by manufacturers and jobbers to the classes of competitors before mentioned, the latter had been prevented from purchasing as freely in interstate commerce as they would have been without such opposition. The findings detail many instances of specific means used to accomplish the various classes of alleged unfair methods of competition, and which we deem it unnecessary to set out.

Both the Saddlery and Harness Manufacturers' Association, its officers, committees, and members of its subsidiary and affiliated associations, were ordered to cease and desist from conspiring or combining between themselves to induce, coerce, and compel accessory manufacturers to refuse to recognize as legitimate jobbers, entitled to buy from manufacturers at jobbers' prices and terms, individuals and concerns doing or endeavoring to do a combined and closely affiliated wholesale and retail business, and from carrying on between themselves communications having the purpose, tendency, and effect of so inducing, coercing, and compelling accessory manufacturers in the respect above referred to.

The Harness Manufacturers' Association, its officers, committees, and members of its subsidiary and affiliated associations, were ordered to cease and desist from (a) conspiring or combining among themselves to induce, coerce, and compel manufacturers and jobbers to refuse to sell to any of the competitors of retail harness manufacturers; (b) using any scheme whereby the active membership of the Harness Manufacturers' Association concerted to favor with or confine their patronage to manufacturers and jobbers comprising the associate membership of that association, or who had not complied with its active membership by selling to certain competitors thereof; (c) using or continuing any system of credentials or other indication of manufacturers' and jobbers' sales policies with regard to certain competitors and consumers, and from encouraging and urging retailers to confine their patronage to or to patronize manufacturers and jobbers whose sales policy is in harmony with the Harness Manufacturers' Association's requirements as before set out; (d) inducing members of the Saddlery Association to use their influence with accessory manufacturers not to sell to mail-order houses or other competitors of retail harness manufacturers.

In our opinion, the commission's finding of fact and the existence of the combinations, schemes, and practices directed to be discontinued are amply sustained either by undisputed testimony or by the great preponderance of the evidence. This conclusion is not overcome by petitioner's criticisms addressed to specific features of the testimony. The findings of fact being so supported, the commission's order is, in our opinion, fully justified by the authorities to which attention has been already called, including especially Eastern States Lumber Co. *v.* United States, supra, where a state of facts quite similar to that found here was held to amount to a violation of the Sherman Antitrust Act.

In view of what has appeared, the criticism of lack of public injury is without force. The suggestion that no damage has been shown, even if true in fact, is answered by the consideration that the remedy afforded by the statute is preventive, not compensatory.

The order of the commission, so far as it relates to the Harness Manufacturers' Association, its officers, committees, and the members of its subsidiary and affiliated associations, is affirmed.

Mr. WARREN. Mr. President, I do not intend to occupy the time of the Senate further than to say that I shall vote against the bill now under consideration. I shall ask the Secretary to read in my time a telegram which I have received from the secretary of state of Wyoming, reciting a resolution adopted by the legislature of that State.

The PRESIDING OFFICER. The Secretary will read as requested.

The Assistant Secretary read as follows:

CHEYENNE, WYO., *January 22, 1921.*

Hon. F. E. WARREN,
United States Senate, Washington, D. C.:

I am forwarding to-night to you, Senator KENDRICK, and Mr. MONDELL, and to committee chairmen certified copy of following memorial:

House joint memorial No. 2.

Be it resolved by the House of Representatives of the State of Wyoming (the Senate concurring), That the Senate of the United States be memorialized as follows:

Whereas on January 24, 1921, 4 p. m., the Senate of the National Congress will by special order vote on the Gronna bill, which provides for the control of the packing and meat-producing industry through a live-stock commission clothed with power to make rules and regulations, said commission to be appointed by Federal Government: And therefore be it

Resolved, That we respectfully urge your honorable body that you give the said Gronna bill the most serious consideration, as it may relate to all of those industries which are directly affected by legislation which is aimed at the packing industry at a time when our business conditions are in a state of unparalleled disturbance and distress; and be it further

Resolved, That a certified copy of this joint memorial be sent to each of the members of the Wyoming delegation in our National Congress and to the chairmen of the Senate and House committees which have this bill under consideration.

FRANK E. LUCAS,
Vice President of the Senate.
L. R. EWART,
Speaker of the House.

Mr. KENYON. Mr. President, I should like to ask the senior Senator from Wyoming what was the vote on that resolution in the house and senate of the Wyoming Legislature?

Mr. WARREN. I will say to the Senator from Iowa that I have not the faintest idea, because the telegram is the only evidence I have. This telegram was unsolicited and unexpected, and was received an hour and a half or, perhaps, two hours ago. It simply says that it is a house resolution which was concurred in by the senate.

Mr. KENYON. I think I know what the vote was, and I think I know how it came about and the purposes of it. There are some 16 stockmen in the lower house of the Wyoming Legislature. I understand nearly all of them opposed the resolution. There are nine stockmen in the Wyoming senate. There were nine votes against the resolution in the senate. I do not say that they were the nine votes of the stockmen—I do not know—but it is a coincidence. Just how many bankers, if any, holding Swift stock voted for it I do not know. I do know that there went from the El Paso convention a representative of the Swift interests to the State of Wyoming, and he has been in charge of this matter.

Mr. WARREN. Will the Senator permit me to interrupt him?

Mr. KENYON. Yes, sir.

Mr. WARREN. The Senator states that there are 16 stockmen in the lower house of the Legislature of Wyoming. I am very proud of that fact. Does the Senator from Iowa assume that those 16 all voted together, either yes or no?

Mr. KENYON. I do not say that. I said most of them voted against the resolution, as I am informed.

Mr. WARREN. The Senator from Iowa seems to be in some doubt as to how many bankers there are in the Wyoming Legislature. I will ask him what his information is as to the number of bankers in that legislature?

Mr. KENYON. I have no information on that subject, but I hope when the members of the legislature get back home the folks will find out about it, and I think they will. I think the action was designed to injure the junior Senator from Wyoming [Mr. KENDRICK], but it will fail.

Mr. WARREN. Will the Senator allow me to say if there are bankers in the Legislature of Wyoming I do not happen to know how many, if any. I have had no correspondence other than that which has come to me officially, and I am assuming that if the Senator knows more about the Legislature of Wyoming than I do, of course, he will assume the responsibility of making the statement.

Mr. KENYON. I assume no responsibility for the statement about the bankers; it may not be correct. I have been informed as to the stockmen; and I do assume responsibility for the statement that an agent of Swift & Co. went to Wyoming from the El Paso convention. Of course it is an attempt to injure the junior Senator from Wyoming. I think he is above any slurs—I do not mean on the part of the senior Senator.

Mr. WARREN. I wish the Senator would distinctly disavow——

Mr. KENYON. I do.

Mr. WARREN. Or avow that statement, if he applies it to me in any manner.

Mr. KENYON. I do not apply it to the senior Senator from Wyoming at all.

Mr. WARREN. No.

Mr. KENYON. But it simply illustrates the methods and the power of this gigantic monopoly, which cares nothing for law, which cares nothing for courts, and is able to swing entire legislatures of States and join with it in this instance the Republican majority in the Legislature of Wyoming. It is a piece of cheap politics to injure the junior Senator from Wyoming.

In this connection, that Senator has been slurred on this floor as trying to legislate for his own interest in a manner, I think, that his friends have a right to resent. I have been glad to make this fight with him in a gentlemanly way. We have not been engaged in the slurring business. The junior Senator from Wyoming has been standing for the stockmen whom he knows; he has not been legislating for himself. A more honest and faithful servant of the people never sat in this Chamber than is the junior Senator from Wyoming. There will not be much accomplished by the Legislature of Wyoming if they are trying to discredit him, but it will arouse the folks back home, who are beginning to understand the packers' tactics, who are beginning to understand the propaganda that they spread from every source, even swinging legislatures.

Mr. WARREN. Will the Senator from Iowa again yield?

The PRESIDING OFFICER. Does the Senator from Iowa yield to the Senator from Wyoming?

Mr. KENYON. I yield.

Mr. WARREN. I wish to say that I know personally a great many members of the Wyoming Legislature, and I desire further to say as to my colleague [Mr. KENDRICK] that his reputation in my State is such that no legislature that has ever assembled would undertake to discredit his character for political or other purposes, because he is known to be a man selected by a large majority to represent the State without regard to politics. He is serving here to the best of his ability. This legislation he believes to be right; I have other views. He understands that, and I understand his views. However, I do not relish at all the idea advanced here by anyone, even by my good friend from Iowa, that the Legislature of Wyoming, whatever may be the Senator's opinion of the Legislature of Iowa, can be traduced, bought, or brought by Mr. Swift or anybody else into committing an act such as the Senator is assuming they have committed.

Mr. KENYON. The Legislature of Wyoming apparently is the one legislature in the United States that has been moved to such action, and it is very strange, in view of the prominent position of the junior Senator from Wyoming in this legislation and the known presence of a Swift agent at Cheyenne.

In this connection I ask to have printed in the RECORD as part of my remarks an editorial from the El Paso Times with reference to the junior Senator from Wyoming.

The PRESIDING OFFICER. Without objection, leave will be granted. The Chair hears no objection.

The editorial referred to is as follows:

[From the El Paso Times of Friday, Jan. 14, 1921.]

CASE OF THE CATTLEMEN.

The speech of Senator JOHN B. KENDRICK, of Wyoming, president of the American National Livestock Association, at the opening of the organization's annual convention at El Paso, was in many respects a notable effort—the effort of a man of seasoned experience and common sense, who thoroughly understood his subject.

True, he painted a rather dark picture of the past trials and present plight of the live-stock industry, but it was the picture of a man who faced facts and saw them in their proper perspective. There was no deepening of shadows and touching up of high lights for the sake of contrast.

He made a strong case for the live-stock grower, but it was not the case of a special pleader. His brief was sound in logic and immaculate in fact—the brief of a man who understood conditions, appreciated their causes, and accurately gauged their effect. One was especially struck by the lack of playing to the gallery. There was no flapdoodle about "plotting of the interests."

Calmly and dispassionately he reviewed the recent troubles of the cattlemen, beginning with drought and culminating in the after-the-war depression. Without malice he presented the facts regarding the evils of the present marketing system; without rancor he described the financial handicaps of the cattle raiser; without bitterness he discussed the competition of cheap foreign meats. And most convincingly he presented a program which he said would save the day for the American live-stock industry.

Senator KENDRICK'S proposals for rehabilitating the cattlemen included such measures as a tariff on farm products equal at least to the cost of production abroad, increased credits for the benefit of small producers as well as big concerns, and early adoption of legislation now pending for a commission to supervise the live-stock industry. The advisability of these measures, of course, is a matter of opinion—a matter which is being discussed widely and vigorously in Congress just now. There are persons who oppose protective tariff on principle; there are those who hold increased credits would mean more of the evils of monetary inflation; there are others who think we already have too much Government supervision of industry. But regardless of all that, there can be no denying that Senator KENDRICK'S program, as he presented it, sounded reasonable and founded on the bedrock of facts.

Mr. POMERENE. Mr. President, before the vote is taken I wish to call the attention of the Senate to the committee amendment proposed on page 16, and I should like the attention of the junior Senator from Iowa while I make a statement with respect to it. In section 20 the committee recommends the striking out of the following language:

cause notice in writing to be served upon such packer or operator specifying the alleged violations, and requiring such packer or operator to attend and testify at a hearing before the commission at a time and place designated therein, and at such time and place the commission shall afford to such packer or operator a reasonable opportunity to be heard in person or by counsel and through witnesses, under such regulations as the commission may prescribe.

And in lieu thereof the committee recommends that the following be inserted:

afford to such packer or operator a reasonable opportunity to be heard in person or by counsel and through witnesses under such regulations as the commission may prescribe at a hearing before the commission, at a time and place designated in a written notice served upon such packer or operator.

It seems to me that that proposed amendment of the committee ought to be defeated, for this reason: The original text requires the filing of charges. I care not who the man is or what his business is, he is entitled to have a charge preferred against him if he is to be tried. It may be that the proposed language confers upon the commission power to file a charge, but there is no requirement that a charge shall be filed. It seems to me that in all other respects the provisions with respect to a hearing are substantially the same; but it is because I feel that the proposed statute ought to specially provide for the formulating and presentation of charges that I think the amendment should be defeated. That is all I care to say about it.

The PRESIDING OFFICER. The Chair is informed by the Secretary that the amendment referred to by the Senator from Ohio has already been agreed to as in Committee of the Whole. The Chair makes that announcement for the information of the Senator from Ohio.

Mr. POMERENE. I am obliged to the Chair. Then, if that is so, I ask unanimous consent that the vote whereby the amendment was agreed to may be reconsidered.

The PRESIDING OFFICER. The Senator from Ohio asks unanimous consent that the vote by which the following amendment was agreed to as in Committee of the Whole be reconsidered. The Secretary will state the amendment.

The READING CLERK. In the original print, on page 15, lines 2 to 9, both inclusive, were stricken from the bill and the following inserted:

Afford to such packer or operator a reasonable opportunity to be heard in person or by counsel and through witnesses under such regulations as the commission may prescribe at a hearing before the commission, at a time and place designated in a written notice served upon such packer or operator.

Mr. POMERENE. Mr. President, I think the Secretary has been reading from a print of the bill which is different from the one before me.

The PRESIDING OFFICER. The Secretary, of course, reads from the authentic print of the bill which is the original copy as reported.

Mr. POMERENE. While I was discussing the bill I had before me, the print of December 10, 1920, and in that print the amendment appears on pages 16 and 17.

The PRESIDING OFFICER. The amendment as read, however, is the same as that referred to by the Senator.

Mr. POMERENE. I realize that.

The PRESIDING OFFICER. The Senator from Ohio asks unanimous consent that the vote by which the amendment was agreed to be reconsidered. Is there objection? The Chair hears no objection, and the vote whereby the amendment was agreed to is reconsidered. The question is on agreeing to the amendment which has just been reconsidered.

Mr. GRONNA. Mr. President, I do not rise to oppose the amendment of the Senator from Ohio, but our time is limited, and I wish to call attention in the hearings before the committee to a portion of the testimony of Mr. Armour; that answers, I think, in part, the question asked by the Senator from Ohio with reference to this uniform system of accounting.

Mr. Armour was asked if a part of the capital of Armour & Co. in the United States was used as capital of Armour & Co. in Argentina or in some foreign country, and it is to that that I wish to refer.

Senator GRONNA. I understood from your answer, Mr. Armour, to Senator NORRIS, that part of your capital, as shown in this statement, is in the South American plant. Am I mistaken about that?

Mr. MEYER.—

Mr. Meyer was the attorney for Mr. Armour.

That appears there, in that report.

Senator GRONNA. Does the amount of profit, then, show in the amount of profits here? Of course, you have not taken out any dividends. But you admit that you have made profits.

Mr. ARMOUR. We have not added any profits at all. That is an entirely separate company, and they have not declared any dividends.

Senator GRONNA. That would hardly answer my question. If you have part of your capital stock, on this statement, as shown in

this statement, invested in the South American plant, and you are making a profit on that plant, it does not make any difference whether you declare dividends or not, so long as you have made the profits. Should it not be shown in this statement?

Mr. ARMOUR. I do not think so.

Senator GRONNA. In order to show the real profit that Armour & Co. made?

Mr. ARMOUR. Not necessarily so. We have not thought so, because it is an entirely separate business.

Mr. HENEY. Has the total amount of business you have shown included your South American business?

Mr. ARMOUR. No, sir.

The CHAIRMAN. What is the capital stock of the South American company?

Mr. ARMOUR. I can not tell you. It is either five or ten million dollars.

Senator NORRIS. Do you know what the profit has been down there?

Mr. ARMOUR. Yes.

Senator NORRIS. How much?

Mr. ARMOUR. Do you mean for the last year?

Senator NORRIS. The last year and the year before, or any other years?

Mr. ARMOUR. I do not know what they were for the year before. I think they were in the neighborhood of $10,000,000.

Senator NORRIS. What were they last year?

Mr. ARMOUR. I am talking about last year. I would think in that neighborhood.

Mr. HENEY. By "last year" you mean 1918?

Mr. ARMOUR. Yes.

The CHAIRMAN. That is on your South American plant, your Argentine plant?

Mr. ARMOUR. Yes, sir. I would think it was in that neighborhood.

Mr. HENEY. I have running in my mind for 1917 something like six or seven million.

Mr. ARMOUR. It may have been.

The CHAIRMAN. And the investment is either five or ten million?

Mr. ARMOUR. The investment is a good deal more than that.

Mr. MEYER. It would appear from this statement in evidence that the investment in the allied companies is $43,000,000.

The CHAIRMAN. Could you enumerate those allied companies?

Mr. ARMOUR. We could; but it is a very long list.

Senator GRONNA. It is hard to get through my head, and I am somewhat slow in figuring out these things. I am at a loss to understand the kind of bookkeeping that you would use in adding in your statement here the capital stock or the assets for these outside companies, and then not including the profits that you make.

Mr. ARMOUR. We do. All the profits have been declared; all the dividends have been declared.

Senator GRONNA. That is not the profit.

Mr. ARMOUR. I do not think it is necessary, if you allow me to say so. We can not divide up profits if we are spending the money again.

Senator GRONNA. Just so that you will understand me: I am a man who deals in a small way. I started a little bank close to my home in 1901. We did not declare any dividends at all, but in about 10 years we had made enough profit to double our capital stock.

Mr. ARMOUR. Yes, sir.

Senator GRONNA. We considered that that was profit, whether we issued it or not. So we simply increased our capital stock.

Mr. ARMOUR. From your surplus?

Senator GRONNA. From our surplus.

Mr. ARMOUR. The same as we increased ours from $20,000,000 to $80,000,000.

Senator GRONNA. But every year when we made a statement—we had to render statements quite often, as you know, under the banking laws—every time we had to show that surplus, and we had to account for that profit. In making a statement such as you have made here, why should not the profits be shown? You have said you have made $10,000,000 profit.

Mr. ARMOUR. We have not thought it was necessary to do it.

Senator GRONNA. But is it not necessary that the public should know how much you have made?

Mr. ARMOUR. We issued a statement down in South America. This will show what our profits are down there. But we do not bring them back here.

Senator GRONNA. Let me ask you this question, then: What right have you to take American capital—we will consider that your capital in South America is South American capital—what right have you to take American capital and charge it in this statement, so long as you are not showing the profit?

Mr. MEYER. They are compelled to, in showing their assets under the reports of the Federal Trade Commission.

Senator GRONNA. Would it not be fairer, then, to the public here to deduct that capital, the $5,000,000, because then that would not tend to reduce your profits, while you must admit that this will tend to reduce your percentage of profits with the kind of bookkeeping you are showing here?

Mr. ARMOUR. I do not think so. I think we can explain that to you. I can not explain it to you now, but that we have a separate company in South America, and that company owns the stock in that separate company.

Senator GRONNA. But it is included in this statement?

Mr. ARMOUR. Yes, sir. They do not necessarily have to declare a dividend unless they want to. If they are spending the money, they do not want to declare a dividend.

Senator GRONNA. Let us give an illustration of that. We will say that Armour & Co. have $100,000,000 capital. Five million of that you take to South America.

Mr. ARMOUR. Yes, sir.

Senator GRONNA. And invest it there. You will actually employ, as a matter of fact, only $95,000,000 here in the United States.

Mr. ARMOUR. Yes.

Senator GRONNA. It will make some difference, will it not, whether you use ninety-five million or a hundred million, so far as the rate of percentage of profit is concerned, when you come to figure that? Have I made that plain?

Mr. ARMOUR. Yes; I think you have. I think we can explain that to you. I can not explain it to you now, but I think I can give you a satisfactory explanation of that if it is necessary.

Mr. MEYER. Senator, I am not in the accounting department, but, as I understand it, they are compelled—and I think Mr. Heney may concur—in making their report, to show all their capital, which includes all their assets.

Senator GRONNA. I am trying to show that your figures showing the rate of percentage are not altogether what they might be, but that, to some extent at least, they might be criticized.

I want to call attention to the fact that Mr. Armour admitted that five or ten million dollars of American capital was employed in the South American plant, and when Mr. Armour was pressed for an answer he admitted that they had made a profit of $10,000,000 in the South American plant. Now, Mr. President, in figuring profits, if the capital stock of Armour & Co. was $100,000,000 in the United States, and $10,000,000 was taken to another country, there would be only $90,000,000 left here. Now, instead of figuring the percentage on the $90,000,000 it was figured on the $100,000,000, and yet a portion of that capital was used in the South American plant. I simply want to call attention to this to show that the packers do not always present the facts as they ought to be presented to the American public, because here they made a profit of $10,000,000 in South America that was not accounted for at all. It was entirely left out, and yet a part of the American capital was employed in making that $10,000,000; yet we are asked the question why we want to investigate and inquire into the affairs of this monopoly?

Mr. EDGE. Mr. President, in the very short time allotted to me I am not going to attempt to define the comparative guilt of the banker, the packer, and perhaps the farmer. I presume the law is supposed to regulate that. However, I am going to vote against this bill because I think it is a mistaken policy to erect additional machinery of this kind for the purpose of administering the business of the country.

There may be, and perhaps are, some things in connection with the administration of the packing interests which should be under greater regulation. I believe some of the facts brought out would lead us all to admit that; but to erect additional machinery to add to the already perplexing labyrinth of boards and institutions and courts and commissions in order to set up a court over one particular industry seems to me absolutely without successful defense.

I have advocated, in the very short time that I have had the honor of being a Member of this body, a budget system. So have many other Senators; and of course the entire policy of a budget system is to coordinate, to bring together these various scattered activities of the Government, and try to introduce a little common-sense business into what should be the greatest business in the world—the business of government. Here we propose under this law to create an entirely new court, new commissioners at high salaries, with all the clerical equipment that is necessary in order properly to conduct such a court.

If additional regulation is necessary—and I repeat that perhaps it is—then why do we not use some of the machinery we already have, the Federal Trade Commission, the Bureau of Markets in the Department of Agriculture, or in some way try to live up to the policy that the Congress has already gone on record for, the establishment of a budget system, instead of the addition which is designed under the bill now under consideration?

We are all wondering throughout the country just what is the real fundamental reason for business inertia and hesitation. There are many answers, and I have not time to go into the solution of that great problem at this time. It would be a very difficult problem to solve; but I am convinced that one of the main reasons for a lack of initiative and enterprise on the part of those business men who have contributed so much in the past to make the country great is simply the fear of overgovernmental regulation and governmental administration of business.

I can imagine that some Senator right now may be wondering, and I am going to anticipate the question, as to why I can speak from this general viewpoint and at the same time, serving, as I have been, as a member of the special committee investigating the coal situation, give acquiescence, so far as that is possible before a bill is actually before the Senate and being debated, to the suggested Calder bill, now being considered by a committee of the Senate, which bill proposes some additional control over the coal situation. That bill, however—and that bill, of course, must receive careful consideration in detail—as it is now prepared, provides for no new machinery. It refers to existing boards, existing commissions, all the questions and prohibitions provided by that legislation. I am not entirely satisfied, however, that that bill, as introduced, meets the situation. I contend, however, that extreme conditions require extreme remedies; and in all the reports of the reduction of the prices of staple articles during the past few months, anthracite coal has gone up, and practically every other commodity has gone down, including the products of the packers and the products of agricultural activities. So, therefore, I am prepared to consider whatever is necessary to bring about the relief contemplated under the Calder bill, irrespective of the measure now under consideration.

The VICE PRESIDENT. The time of the Senator from New Jersey has expired.

Mr. McLEAN. Mr. President, I should like to call the attention of the Senate to the views of the President of the United States on the remedial value of the pending bill. I do not do this with the expectation that it will change any votes, but there may be a few of us who would like to know how easy it is for many of us to fall into bad habits. I am reading from an article written by Mr. Wilson for the American Lawyer:

> Governmental control, which we are undertaking so extensively and with so light a heart, sets up not a reign of law but a reign of discretion and individual judgment on the part of governmental officials in the regulation of the business of stock companies owned by innumerable private individuals and supplying the chief investments of thousands of communities. I can see no radical difference in principle between Government ownership and governmental regulation of this discretionary kind. Regulation by commission is not regulation by law, but control according to the discretion of governmental officials. Regulation by law is judicial, by fixed and definite rule, whereas regulation by commission is an affair of business sense, of the comprehension and thorough understanding of complex and various bodies of business. There is no logical stopping place between that and the actual conduct of business enterprises by the Government.
>
> Such methods of regulation, it may be safely predicted, will sooner or later be completely discredited by experience. Commissions in the future as in the past will reflect rather public opinion than business discretion. The only safe process, the only American process, the only effective process, is the regulation of transactions by the definite prohibition of the law, item by item, as experience discloses their character and their effects, and the punishment of the particular individuals who engage in them.

Mr. President, I do not know that I go quite as far as the President of the United States does in objecting to regulation by commission, but this bill fixes prices, and, in my judgment, it crosses the dead line, and once you cross it you never can return. Fixing prices never lowered the cost of production of anything. It has been tried over and over again. Every civilized nation has tried it; every one of the older States of the Union has tried it, and it has always ended in disaster, because it removes from the industrial engine its motive power.

I have not time to discuss the power of the Congress to pass this law, but I should like a few minutes to discuss the effect of this law.

We all know that everything our civilization has which the savage did not have is due to the fact that society has permitted unusual rewards to go to the man who has made 3 or 30 or perhaps 300 blades of grass grow where but one had grown before; and experience has demonstrated again and again that political liberty without economic liberty is the husk without the ear. History is full of instances where society has escaped from the clutch of the profiteer into the arms of the price fixer, to find the latter the less considerate highwayman of the two.

Mr. President, we know that the wars of the future will be industrial wars, and they will be fought to the finish, and we know that the nation that survives will be the nation that produces the necessities and the comforts of life for less money and with less labor than any other nation.

I want to insist that the men who will lead this Nation to victory will not be the price fixers. Restrictive legislation never reduced the price of anything on earth. People accept unsound and fallacious politico-economic doctrines because they are popular and because when people come to Congress and ask for them they will always find sympathetic political chemists who will pass out something which tastes good. But if we survive as a Nation it will be due not to the price fixers but to our discoverers. It has been well said that the prayers of the poor are answered in the garret of the inventor. Our victory will be due to the discoverers in chemistry, in mechanics, in medicine, in surgery, and last, but not least, in organization and concentration of effort. In punishing monopoly we must be careful not to destroy opportunity.

The VICE PRESIDENT. The time of the Senator has expired.

Mr. McLEAN. Mr. President, I move to amend this bill by striking out the fourteenth section.

The VICE PRESIDENT. There is an amendment pending, and the amendment offered by the Senator from Connecticut is not in order.

Mr. KENYON. I ask what amendment is pending?

The VICE PRESIDENT. The Secretary will state the pending amendment.

The ASSISTANT SECRETARY. When the bill was last under consideration the Senator from Iowa [Mr. KENYON] offered an amendment, on page 15 of the original bill——

Mr. KENYON. I understand that all those amendments were agreed to, and there will have to be unanimous consent to reconsider.

The VICE PRESIDENT. The vote by which they were agreed to has been reconsidered.

Mr. KENYON. I am a little in the dark as to whether I spoke on this or another amendment.

The VICE PRESIDENT. The Senator has not spoken on the pending amendment.

Mr. KENYON. Mr. President, the argument of the Senator from Missouri [Mr. REED] is one we always hear against any regulation of this character. I think we will have to come to the proposition before long that private business, so called and so supposed to be, can pass the line of private business and be charged with a public use, and if that is socialistic doctrine, then the Supreme Court of the United States has become socialistic.

I have not time to argue it as I should like to, but I call attention to the case of Munn *v.* Illinois (94 U. S., p. 125). There is to be found a discussion by the court, a reference to the old decision by Lord Chief Justice Hale, more than 200 years ago, in his treatise De Portibus Maris, which has been accepted without objection as an essential element in the law of property ever since. The court said:

> Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in the use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created.

The Supreme Court in a rather recent case, in Two hundred and thirty-third United States, page 389, the German Alliance Insurance Co. against Kansas, has gone so far as to hold that insurance is of such a public nature that it is charged with a public use, and they refer to the very line of argument the Senator from Missouri has been following, and say, on page 409:

> Against that conservatism of the mind, which puts to question every new act of regulating legislation and regards the legislation invalid or dangerous until it has become familiar, government—State and National—has pressed on in the general welfare; and our reports are full of cases where in instance after instance the exercise of regulation was resisted and yet sustained against attacks asserted to be justified by the Constitution of the United States. The dread of the moment having passed, no one is now heard to say that rights were restrained or their constitutional guaranties impaired.

In the case of Jones *v.* City of Portland (245 U. S.), where the question arose over the establishment of a public yard for fuel, it was resisted by the taxpayers as being a business to sustain which taxes could not be levied on private property. I commend the reading of that case to the Senator from Missouri and the Senator from Maine.

In other words, all these cases proceed on the theory that property, by its use, can pass beyond a mere private matter and become subject to a public use and subject to public control, and if insurance can be subject to control because it partakes of a public use, how much more can the question of the food supply of the Nation, without which it can not live, be subject to public control?

Coal, to which the Senator refers, is coming along as another question, where a few corporations—seven or eight—own and control all the anthracite coal of the United States. Will it be contended that it is socialism to regulate it; that it is entirely out of the domain of law for the Government to have anything to say about the coal proposition when the life of the people of this country depends upon getting coal?

That doctrine has been established by the Supreme Court. It is a doctrine that is in harmony with enlightened common sense and judgment, and if that be State socialism, then the Supreme Court is committed to the doctrine.

Mr. WALSH of Massachusetts. Mr. President, the phase of this question I desire to discuss is the interest the consumer has or should have in this bill. The producers of live stock while numerous and naturally keenly interested are by no means a very large proportion of the population. The recent census has disclosed that more than half of the residents of the United States are residents of the cities. Obviously this part of the community can not raise live stock in a commercial way. Yet city dwellers as well as country dwellers are all consumers. Even many of the country dwellers are engaged in other pursuits than agriculture.

In a word, the citizens of the country are consumers of the necessaries of life, of which meat is the most prominent, and practically all secure their supply through the agency of the retail market. Therefore any measure which has relation to the price the consumer must pay is of interest to all sections of the country, both city and country. New England has reason to be especially interested in this question of fresh meat prices. The consumers there must buy well nigh 100 per cent of their meats from the so-called packers. While I know of six moderate sized packing plants in various parts of New England, which turn out mainly pork products, and which, judging from their names, would appear to be independent, yet I am reliably informed they are all either owned or controlled by

Chicago packers. Thus New England is entirely dependent upon the fair dealing and honesty of the packers to escape extortionate prices and limitless profiteering.

There is one peculiarity about meat prices. Some are much better known than others. The prices on the hoof at the leading markets are generally known among the producers, being reported regularly by the daily newspapers and trade papers. The retail prices are almost equally well known because of the vast number of housewives who come in daily contact with them. The intermediate prices, the packers' wholesale prices to the retailers, are much less widely known. They are known to the wholesalers and retailers concerned and a few trade papers. The daily papers give very little attention to these prices, believing the public is more interested in what the meat will cost the consumer. So within limits the wholesale prices of meats can be changed without attracting any particular attention. The retailer will see to it that a sufficient amount is added to the wholesale price to give him a profit.

The senior Senator from Utah [Mr. SMOOT] has said that all the profiteering in meat prices has been done by the retailers and none by the packers, and that therefore the packers do not need regulating. He made out a good case against some retailers and there is no doubt considerable profiteering is done by them. But I consider open to grave question the theory that the packers have done no profiteering.

Some very instructive charts were recently prepared showing packers' wholesale prices on fresh beef, lamb, and pork for a year, from December 1, 1919, to November 30, 1920, inclusive. With the single exception of the live hog price line on the pork chart, which is taken from the Chicago Drovers' Journal daily hog averages, the prices are all taken from the Bureau of Markets daily live stock and meat trade conditions report, which gives prices for every day in the week except Saturday and Sunday. Saturday's prices are charted as the same as Friday's, as Saturday is a very light day in the wholesale meat business. The pork chart compares the live hog price at Chicago per hundred pounds with the price per hundred pounds of pork loins at New York, Chicago, Philadelphia, and Boston.

The pork cut selected was the 8–10 pound pork loin. Mr. J. Ogden Armour said in a recent statement, December 11, that the light pork loin price is the index of all fresh-pork cuts. The heavier pork loins follow the fluctuations of the lighter loin closely, although at lower price levels. It is realized that the pork loins do not constitute more than 10 per cent of the hog, but in making comparisons for fresh-pork price it seems legitimate to take the cut whose price, as Mr. Armour says, is the index of all fresh-pork cuts.

Some of the things brought out by these charts—being on our guard against drawing any conclusion about absolute profits, as the pork loin is admittedly not more than 10 per cent of the hog—were most interesting.

In the first place, it is apparent from the chart prices that the fluctuations of live-hog prices are much less than those of the pork loins. The maximum for the live hog during the year was $17.20 per hundred on September 20, and $9.70 on November 25 is the minimum; a maximum difference during the year of $7.50 per hundred or 7½ cents per pound. On the other hand, the maximum difference during the year on the pork loin wholesale selling price per hundred pounds is $18.50, or 18½ cents per pound for New York; $20 for Boston, or 20 cents per pound; $21 per hundred, or 21 cents per pound for Chicago; and $21.50 per hundred, or 21½ cents per pound for Philadelphia.

Secondly, the pork loin wholesale prices often vary as much as $5 or $6 a hundred, or 5 or 6 cents per pound between two of the cities. The freight rate to Boston and New York on fresh meat is the same, 96½ cents a hundred, and to Philadelphia only 2 cents a hundred less, which would appear to justify an increase of $1 per hundred pounds in price in the eastern cities over Chicago prices. Chicago-killed pork distributed in Chicago, of course, has no railroad freight to pay. This matter of freight seems to cut very little figure as far as wholesale prices are concerned. Prices in Chicago with no freight to pay are often higher than in the eastern cities.

To illustrate by the prices in a recent month: On November 1 wholesale pork loin prices in Boston and Chicago were the same—$32 a hundred, or 32 cents per pound. They then began to separate. By November 12 prices in Boston had been advanced to $38 a hundred, while the Chicago price did not get above $33. After the 12th prices were allowed to drop in Chicago while being maintained in the eastern cities. On November 22 the Chicago price was $25 per hundredweight, while in Boston, New York, and Philadelphia the prices were $37.50, $34.50, and $34, respectively—a difference of 12 cents per pound. The Boston Transcript, in its editorial columns, invited attention to the fact that at wholesale prices fresh pork was 12½ cents per pound higher in Boston than Chicago on the 22d and 14 cents per pound higher on the 23d. In fact, the variation between Chicago and Boston prices on these days was greater than the entire cost per pound of the live hog, which was 11 cents per pound.

Another feature shown by these price charts is the marked advance in all markets during September and October.

Live hogs during this period had a maximum advance of about $2 per hundred pounds or 2 cents per pound. Fresh pork was advanced from $8 to $10 a hundred or 8 to 10 cents per pound on the strength of this and held the advance till about the middle of October.

This sort of a price advance is not peculiar to the year 1920. A similar price phenomenon appeared in the summer and fall of 1919. There was a severe drop in the price of live hogs, but fresh pork loins maintained their price in the eastern markets and even advanced a little. The Boston Transcript about the date of October 20, 1919, noticed this situation editorially under the title "Again the pork barrel." This is brief but very much to the point and is as follows:

> It does not take an expert in figures to deduce that there is profiteering in pork and that the excessive margin in this instance is extorted before the pork reaches the retailer. The wholesale price of pork loins—considered as best cuts for roasting—ranged in Boston yesterday at $34 to $38 per hundredweight for loins ranging in weight from 8 to 14 pounds. This fresh pork came largely from the West according to reports of the United States Department of Agriculture's Bureau of Markets. A strike at packing plants near Boston is reported as curtailing the supply of pork cuts in the market from near-by sources. There seems to have been, however, an adequate supply of western dressed fresh cuts—available speedily by refrigerator-car service—arriving constantly. In fact the receipts from this source during the week were 470 per cent of receipts of a week ago.
>
> Now as to the cost at Chicago. Live hogs sold in Chicago yesterday at $11.85 to $12.85 for bulk of sales. The prices of live hogs in Chicago have declined steadily since July 31, when a top figure of $23.60 per hundredweight was reached. Pork loins are retailing in Boston at the same old high figures and recent United States Bureau of Markets Reports show the wholesale figures of loins to be even higher than when top figures of live hogs were reached.
>
> The men who buy live hogs in Chicago can deliver fresh loins from these hogs to the retail trade in Boston within a very few days. With the price of live hogs reduced in Chicago nearly 50 per cent and the price of fresh pork loins in Boston remaining at the same old level—or slightly increased as the Government figures show—it is easy to see how, somewhere between the stockyard and the wholesaler's delivery, there is profiteering in pork.

This editorial attracted attention. Organizations like the Consumers' League discussed the subject of high pork prices in various parts of the country. The packers evidently did not like the publicity and deemed it prudent to make some modifications in the wholesale prices of pork loins. The result was that there was a drop of some $10 a hundred in November, 1919.

Now let us take the situation on September 20, 1920, when live hogs sold at the highest of the year, $17.20 per hundred. At that time the wholesale selling price of 8 to 10 pound loins at Chicago was $41.50, at New York $42.50, at Boston $41.50, and at Philadelphia $41.

Taking the same date, September 20, in 1919, we find that live hogs were selling at $17.30, only 10 cents a hundred higher than the same date in 1920. Yet we find that with live hogs at practically the same price, 8 to 10 pound loins were selling in Chicago at $37.50, in New York at $38, in Boston at $38.50, and in Philadelphia at $36.50. In other words, we find that with live hogs one-tenth of a cent per pound lower in 1920 than in 1919 the packers were treating the public substantially worse in fixing their wholesale prices, the fresh pork being $4.50 a hundred higher in New York, $4 higher in Chicago, $4.50 higher in Philadelphia, and $3 higher in Boston.

I now pass to the consideration of beef and lamb prices, which perhaps are more representative of the points I am trying to bring out, inasmuch as they compare the live price of the animal with the price of the entire edible part of the animal when dressed.

The margin or spread between the live steer price and the dressed carcass runs as low as $4.50 a hundred and as high as $12.40 a hundred. The actual live price of this class of steers ranged from $11.95 to $16.80, or a variation of $4.85, or 5 cents per pound. As was the case with pork, the carcass price in the cities named had a much wider range during the year than did the live animal. For New York the extreme range was $13.50 per hundred, or 13½ cents per pound; for Chicago, $8; for Boston, $13.50; and for Philadelphia, $10.55.

An examination of this beef price chart shows the same exaggerated increase in dressed price in response to a minor increase in live price that we found in the case of hogs. For example, in the latter part of April dressed carcasses went up, while live steers came down. This must have resulted in less business, for in May prices were lowered to coax in more busi-

ness, after which, in June, prices went to the highest of the year with very slight increase in the price of the live animal. We have the same wider spread during the summer and early fall months. The table of prices clearly shows that the packers in fixing their wholesale prices do not give the consumer the benefit of the low prices prevailing for cattle.

We now come to the lamb chart, which ought to be interesting, as this is the part of the industry which some fear is threatened with extinction.

There is somewhat more range between the high and low prices of the year in live lambs than was the case with steers or hogs. The high price was $20.50 a hundred and the low price $10.50, a range of $10.

The range in prices in dressed lambs was $19 for Boston, $18 for New York, $16 for Philadelphia, and $11.50 for Chicago. A striking feature is that at the beginning of the year covered, the margin between the live and dressed lambs was $5.75 per hundred, or 6¾ cents per pound, and at the end of the year $12.75 per hundred, or 12¾ cents per pound. An attempt will doubtless be made to show that the reduced value of the pelt, the principal by-product, is responsible for this, but I shall point out later why the decreased pelt value is insufficient to justify this wide increase in margin.

During the first three months of the year 1920 the price of live lambs increased about $5 a hundred. The dressed lamb prices increased from $11 to $12 a hundred. During that period of the year the value of the pelt was steadily advancing.

The margin between the price of the live and dressed lamb for the last five months of the period was substantially more than the cost of the live lamb.

To put this more concretely in the form of figures the price of live lambs at the beginning of the year was $14.75; at the end of the year it was $11.75, a decrease of $3 a hundred, or 3 cents per pound. We would naturally expect that the consumer would be given the benefit of this decline in the form of lower wholesale prices. What do we find? At the beginning of the period the average price of the dressed lambs at the four cities was $21.50 per hundred; at the close of the period $24.37, a price of $2.87 or nearly 3 cents per pound more than at the beginning. The price of live lambs went down while the price of dressed lambs went up.

I have not the time to answer some possible objections that have been made; it is enough to say that there has been no increase in the cost of labor and only one-fourth of 1 cent per pound in freight.

The VICE PRESIDENT. The time of the Senator from Massachusetts has expired.

Mr. McLEAN. Mr. President, will it be in order for me to discuss the amendment?

The VICE PRESIDENT. It will.

Mr. McLEAN. I would like to call the attention of the Senator from Massachusetts [Mr. WALSH] to the fact that the thing that interests the Massachusetts housewife is the price which she pays for mutton and ham. The Massachusetts housewife, when she goes to market, is not interested in the biography or history of hogs or sheep. She wants to know why the price which is exacted of her is anywhere from three to five times as much as that which she reads about in her morning paper.

I wish also to call the attention of the Senator from Massachusetts to the fact that this bill raises the price of beef, if it does anything. It would not have the support of the cattlemen in the West if they did not believe that it would raise the price of beef to the producer of beef. The commission has power to see to it that the packers can not depress the prices of beef to the producer, and that is all the bill attempts to accomplish.

I call the attention of the Senator from Massachusetts to the fact that there are more than 1,200,000 retail dealers in the United States to-day—nearly 1,300,000. The retail dealers employ, on the average, about one assistant each. That means that there is a retailer in the country for every 35 or 40 people. That means that there is a retailer for every seven or eight families.

Mr. HARRISON. Mr. President——

Mr. McLEAN. I can not yield for a question or an interruption. My time is too short.

They—the retail dealers—can not compete, because many of them went into business on a rising market, and they find that they possess goods that cost them a great deal more than they can sell them for, and consequently competition is impossible.

What is the remedy? Congress certainly has no jurisdiction over the matter. So far as Congress has any jurisdiction over the matter, it is confined to products in interstate commerce. If the legislatures of the States are moribund, if they are indifferent to monopolistic prices that are being charged by retailers, that is not the fault of the American Congress. I suggest to the Senator from Massachusetts that if there is any conspiracy to raise the price of beef that affects the price to the consumer, it is a matter for the legislatures of the States and not for the Congress.

I do not object to giving the Federal Trade Commission all the power that may be necessary to enable it to assist the Department of Justice to bring to account the men who conspire to restrain trade in interstate commerce. Congress can do two things: Congress can maintain the hope of reward for the honest business man and it can punish the guilty. It seems to me that this legislation is a confession that the Department of Justice is of no use and that the Federal Trade Commission is of no use; and now we are here endeavoring to create new commissions that will only add to the difficulties instead of offering a real remedy. It seems to me it is the duty of Congress to see that the right thing is done and punish the guilty before we indulge in processes which we know by experience will, if they do anything, raise prices and discourage production.

The VICE PRESIDENT. The time of the Senator from Connecticut has expired.

Mr. HARRISON. Mr. President, will the Senator from Connecticut now in my time answer the question which I desired to propound to him when he was occupying the floor? The Senator from Connecticut was answering the Senator from Massachusetts [Mr. WALSH] touching the high prices of meat. I wish to ask whether he favors subdivision No. 11 of section 1 of the emergency tariff bill, which places a 30 per cent ad valorem duty on cattle and 2 cents per pound on fresh and frozen lamb, mutton, and pork?

Mr. McLEAN. Whether I am in favor of a tariff on imported meats?

Mr. HARRISON. Yes. Is the Senator in favor of the provision in the emergency tariff bill which proposes to raise the price of cattle 30 per cent ad valorem and 2 cents per pound on other fresh meats?

Mr. McLEAN. I am, most decidedly; and if the Senator wants my reasons I shall be glad to give them to him at any time. I do not think that I had better now enter into a discussion of the tariff question. It would not affect, as the Senator knows very well, the price of beef consumed by the American people when the article reaches the consumer.

Mr. HARRISON. Who is affected, then, by this 30 per cent ad valorem and 2 cents per pound?

Mr. McLEAN. It helps to protect the American producer of beef against ruinous foreign competition.

Mr. HARRISON. How does it help protect the producer of beef if it does not affect the consumer?

Mr. McLEAN. Because the difference in price between the producer and the consumer is so great that the effect of the tariff is negligible to the consumer. The Senator knows as well as I do that there are plenty of instances where the objection which he raises has little or no effect on the cost of the article to the consumer.

Mr. HARRISON. The Senator is opposing here a bill which proposes to help the consumers to get their beef and various other meats more cheaply, but he is in favor of the emergency tariff bill, which places a greater burden on the consumers when it places 2 cents per pound on certain fresh meats and 30 per cent ad valorem on cattle.

Mr. McLEAN. That is for the Senator to say. I am opposed to this bill not because it lowers or raises prices but because it fixes prices.

Mr. WALSH of Montana. Mr. President, in my time I desire to ask the Senator from Connecticut if his answer to the Senator from Mississippi does not destroy the argument that he has just been making, directed to the Senator from Massachusetts, namely, that this is a plan to raise the price to the producer, and, therefore, must of necessity raise the price to the consumer, and accordingly the Senator from Massachusetts, under the argument of the Senator from Massachusetts, ought to be opposed to the bill.

Mr. McLEAN. I understand the Senator from Montana is claiming that I should favor the bill because it raises the price to the producer of cattle.

Mr. WALSH of Montana. Not at all. The Senator from Connecticut was making the argument that because the bill would raise the price of cattle to the producer the Senator from Massachusetts ought to be opposed to it, because it would raise the price to the consumer. The Senator from Connecticut now says in answer to the Senator from Mississippi that the price to the consumer has nothing at all to do with the price to the producer.

Mr. McLEAN. Oh, no; I did not say that.

Mr. WALSH of Montana. That is the argument as I understood it. The Senator is in favor of the tariff because——

Mr. McLEAN. If that is true, it is because the dealers in the product are so many that between the producer and the consumer the processes of legerdemain in raising prices are so adequate that the price to the consumer is not affected at all by the price to the producer.

Mr. WALSH of Montana. In one case the difference will be consumed by the intermediary and in the other case it will not.

Mr. McLEAN. I repeat I am opposed to this bill because it fixes prices, not because it raises or lowers them.

Mr. WALSH of Massachusetts. Mr. President——

The VICE PRESIDENT. Does the Senator from Massachusetts wish to address himself to the amendment? He has already had five minutes.

Mr. GRONNA. Mr. President, a parliamentary inquiry.

Mr. WALSH of Massachusetts. How is it that the Senator from Connecticut could speak twice upon the amendment?

The VICE PRESIDENT. The Senator from Connecticut answered in the time of the Senator from Mississippi, which was given to him.

Mr. HARRISON. I ask the Chair if my time has expired. If not, I yield to the Senator from Massachusetts.

The VICE PRESIDENT. The Senator's time has expired.

Mr. WALSH of Massachusetts. A parliamentary inquiry, Mr. President. How does it happen that the Senator from Connecticut [Mr. McLEAN] has just had a second opportunity of addressing the Senate? Prior to his recent statement, had not the Senator from Connecticut addressed the Senate?

The VICE PRESIDENT. The Senator from Connecticut has been addressing the Senate in the time of the Senator from Mississippi [Mr. HARRISON], who yielded his time to the Senator to ask him a question.

Mr. HARRISON. I ask the Vice President has my time expired? If not, I yield to the Senator from Massachusetts.

The VICE PRESIDENT. The time of the Senator from Mississippi has expired; he has exhausted his five minutes.

Mr. GRONNA. A parliamentary inquiry, Mr. President. Is the amendment which has been offered by the Senator from Ohio [Mr. POMERENE] now the pending question?

The VICE PRESIDENT. The question is on the amendment which has been offered on behalf of the committee, which has been reconsidered.

Mr. GRONNA. I wish to say that I know there are a number of amendments which Senators wish to offer to the bill. So far as I am concerned, I shall be very glad to accept the amendment of the Senator from Ohio, that is to disagree to the committee amendment. I believe that course would be preferable to agreeing to the amendment proposed by the committee.

Mr. KENYON. Mr. President, is the question now on the amendment of the Senator from Ohio?

Mr. POMERENE. Yes; I so understand.

The VICE PRESIDENT. The question is on the amendment offered by the committee. The Senator himself offered the amendment.

Mr. KENYON. Mr. President, I will say to the Senator from Ohio that the purpose of the amendment was to endeavor to change the meaning so as to conform to a recent decision of the Supreme Court which has not yet been reported. I refer to the decision of the Federal Trade Commission against Anderson Gratz. If the chairman of the committee does not object to the amendment, personally I do not care about the change, for I think the text as originally reported covered the ground. The purpose of the amendment, however, was as I have stated.

Mr. POMERENE. Mr. President, if I may be permitted to say a word, the original text of the bill requires the filing of a complaint and the giving of notice thereof to the party against whom the complaint is made. The committee amendment simply provides that the party shall be given a hearing, but there is no requirement that a complaint shall be filed.

In the case referred to by the Senator from Iowa the question was not one as between complaint and no complaint, but the question was rather as to the sufficiency of the complaint filed in the case. For that reason, it seems to me the committee amendment should be disagreed to.

Mr. STERLING. Mr. President, may the pending amendment be stated?

The VICE PRESIDENT. The pending amendment will be stated.

The ASSISTANT SECRETARY. The Senator from Iowa has offered the following amendment, using the original text of the bill: On page 15, section 20, title 5, beginning with line 2, to strike out that line and all down to and including the word "prescribe" on line 9, and in lieu thereof to insert:

> Afford to such packer or operator a reasonable opportunity to be heard in person or by counsel and through witnesses under such regulations as the commission may prescribe at a hearing before the commission, at a time and place designated in a written notice served upon such packer or operator.

Mr. KENYON. Mr. President, the Secretary states the amendment as being on page 15, which creates some confusion. In the copy of the bill which most Senators have the amendment is on page 17.

The VICE PRESIDENT. The original text of the bill must be used at the desk as there is no other way in which the record may be properly kept. The question is on the amendment of the committee.

The amendment was rejected.

Mr. HITCHCOCK. Mr. President, I wish to say a word or two on the bill, and then it is my purpose to offer an amendment at this time.

I shall support the pending bill, although the opinion in my section of the country is somewhat divided as to its merits. I shall support it on the general principle stated by the Senator from Iowa [Mr. KENYON] that the packing-house business has become of such stupendous size and of such great importance to the food supply of the people and has so nearly drifted into the hands of a few people, who are under suspicion, at least, of controlling it, or temptation to do so, that it has ceased to be a private matter and has become a matter in which the vital interests of the American people are deeply concerned. It has become a matter in connection with which the Government may legitimately reach out its strong hand for the protection not only of the consumer who requires meat supplies from the market but also for the protection of the shippers of live stock, who at the present time and for a number of years past have been under the necessity of selling their products in a market in which they had practically no voice in fixing the price.

Mr. President, I have not any idea that the bill is anywhere near perfection. It is like every regulatory measure that Congress has passed; it will inevitably require future amendment from time to time, just as every bill we have passed of a regulatory nature in the past has required amendment from time to time when experience has demonstrated the need. To my mind there is a defect in the bill as presented for the consideration of the Senate, and the amendment which I shall offer will, if agreed to, I believe, cure that defect.

As it is now, when the shipper of live stock puts his live stock into the car and sends it to market he loses control over it. He sends it to a market in which he has no knowledge as to what the price will be and no voice in fixing the price. His shipment may arrive on a day of great scarcity, and then possibly he may get a good price; it may arrive on a day of overwhelming plenty, and then he will get a price which will be destructive to his industry and unprofitable. It seems to me that that condition should be remedied; it seems to me that the packers should not be left to make their bids upon the live stock until the very hour of purchase, until the cattle are there in the pens beyond the control of the shipper, but that they should make their bids in advance, so that the shippers will have some knowledge, at least, of the price that their product is to secure. So far as I know, the producer of no other product in America is so absolutely dependent upon the buyer. The producer of no other product in America, so far as I know, is compelled to sell his goods in a necessity market entirely beyond his own control.

For that reason, Mr. President, I shall offer before taking my seat an amendment which should constitute a new section of this bill. It is designed to do these things: First, to provide that the commission created by the bill may establish a Government classification of live stock in each market; second, that packers and other buyers in that market shall be given an opportunity to bid on that classification one week or more in advance as to what they will pay for any particular classification of live stock and the quantities they will buy of that classification on the day set.

Mr. President, the Cudahy Packing Co. or the Armour Packing Co. know to-day, Monday, just as well as not, how many head of live stock they will want a week from to-day in their packing houses. They know to-day, just as well as a week from to-day, what they can afford to pay for the live stock. There is no reason why they should not make their bids to-day and have them filed with the commission as to what they will pay next Monday for the live stock which will be shipped to them.

The amendment does not make it compulsory, of course, on the packers to make bids, but provides that they may make them; they may file them with the commission, and when they file them with the commission they are given certain rights; they

are given a preference in the purchase of that live stock at that price a week from to-day.

It may be said that shippers will not desire to have their live stock sold in that way. It is provided in my amendment that a shipper may specify when he sends his stock to market that he does not send it there under this provision, but that he desires to take his chances. The effect of my amendment will be that, after the bids are filed with the commission, the commission will publish them in the newspapers, just as they publish the market reports of to-day, so that the farmer or the shipper in picking up his paper to-night will know what the price will be on a certain number of cattle next Monday, and he can decide now or to-morrow whether he wants to send his cattle to market to get that price. The bidders, if they make bids, are under compulsion to make them good on the days set, and they have the preference in buying the cattle against those who have made no bids.

Mr. WADSWORTH. Mr. President, will the Senator yield?

Mr. HITCHCOCK. I yield.

Mr. WADSWORTH. Under the proposal of the Senator would the bidders have to make good the bids, no matter how many cattle came to market?

Mr. HITCHCOCK. They would only make good for the number they bid upon. They would specify how many they could consume. Such a plan would stabilize the market. Instead of having on to-day, Monday, when there is an inadequate number of head of cattle on the market, the price go up, the price would be what was agreed upon a week ago, and on to-morrow, instead of that price going away down because of a great arrival of cattle, the price would be stabilized to what had been bid on Tuesday a week before.

Mr. WADSWORTH. Mr. President, will the Senator yield again?

Mr. HITCHCOCK. Yes.

Mr. WADSWORTH. Would it not be necessary to follow the same plan clear on down to include the retail butcher, and have him announce a week in advance what he will sell meat for, or, rather, to have the ultimate consumer announce to-day what he will pay for meat in the butcher shop next Monday?

Mr. HITCHCOCK. No; Mr. President. I think the Senator can hardly make that contention seriously. I think the shipper should have some sort of knowledge as to what the market will be to which he ships his goods and not ship them, dependent wholly upon the packers, who control the market and dominate it and at present even own the stockyards themselves. I do not assume that all the cattle and all the hogs so shipped will be sold at the bid price, but I say it can be made sufficiently to the advantage of the packers to make their bids in advance, because they will be given preference in the purchases. The packers are interested in a steady market; they are interested in a steady run of live stock to that market.

But that is not all, Mr. President. Any one who has visited a live-stock market knows that there is another great industrial evil in the market. Every morning when the time comes to open the gates to the packing houses there will be found thousands of men there clamoring for admission. They are the packing-house workers, who do not know till the day comes how many men are to be employed. If the stock receipts are large and the packer has many animals to slaughter, most of them will find employment. If not, hundreds may be turned away and forced to endure a day of nonemployment. This is due in part to the irregularity of the receipts. If receipts are to be regulated and standardized or equalized, employment will be equalized and one of the uncertainties of packinghouse employment greatly improved.

The VICE PRESIDENT. The time of the Senator from Nebraska has expired.

Mr. HITCHCOCK. Mr. President, I should like to offer the amendment so as to have it pending.

The VICE PRESIDENT. The amendment will be stated.

The ASSISTANT SECRETARY. It is proposed to add a new section in the bill at the end of title 3, as follows:

SEC. —. The commission shall also have power to formulate and publish for the use of shippers and packers a classification of live stock for each stockyard market, and this classification shall be known as the Government classification for said market, and in the absence of any special agreement or stipulation to the contrary in any case the prices quoted, the bids made, and the sales of live stock upon said market shall be upon said Government classification.

The commission shall have power at each stockyard to receive and publish bids for live stock from packers and other buyers on Government classification for a week or more in advance, which bids shall bind the bidders to purchase at the prices stated on the days named the number of head of live stock specified according to classification, and which shall entitle said bidders on the dates named to preference in purchasing at prices specified up to the amount of live stock named in their advance bids if receipts are sufficient to cover all bids, but if not sufficient, then allotments to be made pro rata among bidders by said commission.

The commission shall, one week in advance, from day to day notify each common carrier delivering live stock to a stockyard of the approximate number of head of live stock for which advance bids have been received for each particular day, and the probable proportion which each common carrier can wisely deliver on each day at said stockyard, based on its average proportion of deliveries in the past.

In the absence of any declaration to the contrary, it shall be presumed that all live stock received at any stockyard is sent there under the protection and provisions of this section, but any shipper may expressly provide to the contrary.

Mr. SHERMAN. Mr. President, I believe I have not used the five minutes to which I am entitled on the bill. If the plan proposed by the Senator from Nebraska should be embraced in one of the rules made by the proposed live stock commission, then there ought to accompany it a rule that the shipper, on the day when he contemplates starting a shipment in Texas or Wyoming, shall notify his commission man, who in turn shall post the notice on a bulletin board at the destination to which the cattle are consigned, and, in addition, the consumer at the local meat market ought to post his wants at the meat market so that he may keep track of his cook. That would be no more preposterous than to expect a shipper days in advance to announce that he proposes to ship a certain number of head of cattle to Chicago or Omaha.

The singular thing to me, Mr. President, is that everybody knows how to run the packing business except the packers. For 25 years everybody in the United States knew how to run the railroads but the railroad men, but finally in the Esch-Cummins law it was admitted that probably railroad men know more than anybody else about the operation of railroads.

There will be, no doubt, a number of rules, if the live-stock commission provided for in this bill should be created, that will greatly enhance the price of cattle, if such a thing be possible. I do not hear much complaint from the hog raisers. I have not found a single hog raiser that specifically has made any complaint, except as he may be incidentally a member of some of these numerous active civic bodies engaged in the agitation; but, as the Senator from Connecticut inquired, when the price of cattle is raised it implies a rise in the dressed-meat products that come from the steer. That leads me to inquire why somebody here has not complained about the retailer.

Now, I happen to know that the retailers are a little too numerous for you folks to tackle. That is what is the matter with you. All of these gentlemen who are loaded down with reforms of various kinds never tackle the retailer. They remember, maybe, that there are 430,000 retail grocers in the United States, and about one-third of them sell meats, to say nothing of the great number of retail meat markets. That is the reason why the reformer does not go after the retailer; and still a retailer in Washington with $800 in business, put in the bank, made $8,000 in one year. That is the sworn testimony in the District of Columbia a year ago this summer—a fairly good per cent—and the retailer generally, in the market in which he sells to the private consumer the same meat that is complained about here, gets 100 per cent advance. Nobody complains about the retailer, and still there is where the spread occurs.

I have bought, by the carload lot, meats of all kinds on the market, from independent packers and from the five large packers, and I have followed the meat from the inventory that came to my desk—the same cut of meat, beef and pork—into my kitchen, and detected the retailer in charging me from 100 to 140 per cent advance in my own town. I did not complain about it. I suppose the retailer has to live, like the rest of us. You go to Mr. Retailer, and he says, "Oh, it is the dreadful packer that is doing all this." He lays it onto the packer. Why does he not have nerve enough to stand up? Nobody is going to hang him. Why does he not tell the truth about it? Yet there are over half a million of them in the United States that are keeping as still as if they had no more power of speech than an Egyptian mummy down here in the Museum. They know what is the matter, but they give the packer no help. They think the packer can take care of himself; and still they are in part responsible for this tremendous agitation that has occurred here, resulting in such measures as this.

Mr. RANSDELL. Mr. President, merely a few words on the bill itself.

I have the honor of being a member of the Agricultural Committee which considered this bill, and I should like to remind the Senate that the committee gave very painstaking care and attention to the measure.

It was before us for a good long while, and we heard a large number of witnesses from every portion of the country. I do not know that I ever participated in a more thorough-going in-

vestigation, or a more patient one, than was given to this bill; and, as I recall, the report of the committee was unanimous.

We realized the extreme difficulty of preparing a bill to eradicate what everyone admitted was an evil. I think there was hardly a witness before us who did not admit, at least in substance, that something should be done. It was admitted by all that the packing business is one of the largest in the world, some of the witnesses maintaining that it was equal in volume to that of the railroads. It certainly affects every man, woman, and child in the Nation just as much as the railroads do. It was of the greatest importance; and in substance, Mr. President and Senators, we found that this great business, so intimately related to every one of us, was owned and controlled by five packing companies, the so-called "Big Five." They completely dominated and controlled this business. They were too powerful! To those who would like to have one great central power here in Washington controlling everything, and doing away with State governments, and municipal governments, and parochial governments, and all local governments, it may appeal strongly to have a great, dominant organization like the five big packers controlling the food products of the country; but to people who believe in democratic principles, who believe in only a reasonable government in Washington, a reasonable government in the States, in the counties, in the municipalities, down to the families themselves, and no more interference than we are obliged to have, I say, to those people a bill like this must appeal strongly.

Ah, you will come back and say, "Why, you are going to control private enterprise."

Tell me it is private enterprise when five allied companies control the food of this, the greatest country on earth? Tell me it is private enterprise when these five big packers get the benefit of interstate commerce, the benefit of all the laws of this land, to enable them to carry on their business? They invoke all the agencies of the Government to help them, and they object to any control, to any interference from the Government.

Senators, one of the things which the five big packers have been doing in the past—I believe to some extent they are now controlled by the consent decree entered into with the Attorney General—was to dominate, own, and control the stockyards of this country.

What does that mean? It means that the farmer who ships stock into those yards sends them to a man to sell for him, to act as his agent, when he knows that the only buyer in those yards is the very man who is the owner of the yards, and that the commission merchant is selling to himself. That is the substance of it. If I own, control, and dominate the stock yard and regulate it in every way, and I am the only buyer in that yard, tell me that there is going to be fair dealing? I can not think it.

I happen to be engaged in a small way in the business of producing cotton. Cotton is consumed by the great spinners of this country and the foreign spinners. How would I like, when I send my cotton to market, to have it sold by men who are in the spinning business? I send it to commission merchants who are not connected with the spinners and are entirely disinterested parties.

The VICE PRESIDENT. The time of the Senator from Louisiana has expired.

Mr. OWEN. Mr. President, the soul of this bill is to make it unlawful for any packer to engage in any unfair, unjustly discriminative, or destructive practice or device in commerce. It is to prevent the buyers combining, so that when the producer of cattle gets to the market he is confronted with but one buyer. When there is but one buyer in the market, by a combination of these interests, that one buyer dictates the terms of life and death to the producer of food products in this country, and that is intended to be controlled by this bill.

I produced cattle for many years. For seven years I ran a cattle ranch. I sent 18,000 head of steers to the market. There was but one buyer. That buyer dictated the terms upon which those cattle were sold, and at the end of seven years I was compelled to give up the business, because I made nothing out of it.

The cattle-producing elements of this country are entitled to reasonable encouragement. After 40 years we have been unable to control the monopoly in the beef-packing business, and if the Senate fails or refuses to pass this bill it will fail to discharge a very great duty to this country. We ought to pursue a policy which will encourage the production of foodstuffs. We ought not to follow a policy which will discourage the production of food.

The bill is simple in its terms. It provides only for the control of monopoly. It provides a reasonable mechanism.

Senators say they do not favor any further commissions. I want to say to Senators that they have to be content with a private commission, controlled by a private interest, for private profit, or have to have a public commission protecting the rights of those who produce the foodstuffs and the rights of those who are consumers in this country. You have to take your choice. For myself, I choose to prefer what this bill affords, a public commission, to protect the producers of foodstuffs and to protect the consumers of foodstuffs.

Mr. HENDERSON. Mr. President, a very startling but interesting situation has developed in the course of the debate. I understand the Senator from Connecticut [Mr. McLEAN] to claim that if this legislation is enacted into law it will increase the revenues of the producer. I understand the Senator from Massachusetts [Mr. WALSH] to claim that if this legislation is enacted into law it will reduce the price to the consumer. If that is true, this is a very desirable bill, because it will give the producer more and cost the consumer less.

Out of my time I would like to ask the Senator from Massachusetts whether the charts he has upon the wall show that the price will be reduced to the consumer if this bill becomes a law?

Mr. WALSH of Massachusetts. The prices quoted by me in my earlier remarks are all wholesale prices. There have been no retail prices quoted by me. The charts show that almost invariably when the price of the live animal has decreased the wholesale dressed-meat price has increased. That is the history of this business during the year from December 1, 1919, to November 30, 1920.

I can not too greatly impress upon the Members of the Senate the folly of the argument that the cost of the live animal means a higher cost to the consumer, for these charts, if they prove anything, prove that to be absolutely absurd; and they not only prove that to be absurd, but they prove that there is a juggling of prices in all the large cities of the country.

Mr. PITTMAN. Mr. President, I can say little in the five minutes permitted me under the agreement. This bill has a splendid purpose. It is the outgrowth, I think, of the study and experience of the junior Senator from Wyoming [Mr. KENDRICK], who possibly knows more about the live-stock industry in this country than any other man in the Senate, or at least as much. He is trying to reach certain wrongs. Those wrongs are as to the marketing of live stock. He did not intend by this act to have Congress create a commission to take the place of the Federal Trade Commission.

The troubles have all been stated. The shippers of live stock are not informed so that they can anticipate a congestion of the market. There is another wrong, and that wrong is that when live stock reach these great stockyards, in the great markets, they are subject to discrimination in the method in which they are handled there and prepared for purchase.

Those are the two things. Those things can be reached by a clear statement of the remedies for those wrongs. This bill does not do that. We are talking about the four or five great packers. But this bill reaches practically every stockman, every butcher, and every farmer in this country. The stringent regulations which are intended to control the great packers will be used to harass our live-stock raisers.

Let us see whom it includes. It says:

> The term "packer" means any person engaged in the business of slaughtering live stock or preparing live-stock products for sale, or of marketing live-stock products as a subsidiary of or an adjunct to any such business.

That will take in practically every live-stock raiser and farmer in this country.

Further, what does the term "stockyard" mean? It provides:

> The term "stockyard" means any place, establishment, or facility commonly known as stockyards, consisting of pens or other inclosures and their appurtenances in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale, feeding, feed, watering, or shipment.

Practically every cattleman in our country out there has a pen of that character, and would be subjected to the stringency of this bill. Read what this bill says. It allows this commission to establish a system of bookkeeping for practically every cattleman and farmer in our country.

Not only that, but it allows them to arrange when they shall sell, how they shall sell, under what conditions they shall sell, how the stockyards shall be made sanitary, and so on.

The commission has the right to make all kinds of rules and regulations and then to sit as judges as to whether they are violated.

Let this bill go back to the committee and let it be drawn in accordance with the way the Senator from Wyoming [Mr. KENDRICK] wanted it, and it will get an almost unanimous vote

in this body. But when you confuse this character of legislation with antimonopoly legislation you can not accomplish what you are seeking to accomplish, and you are establishing a commission here that is going to cause more trouble than good.

I am ready and willing to vote for anything which will remedy the unfortunate condition, but I say that this bill has not been properly considered. It has been considered in the matter of hearings, but it has not been considered as a matter of law, nor as to its effect upon the producer, and it has not been considered at all in connection with the existing Federal Trade Commission law. The whole thing is involved and confusing. It is almost impossible to understand it. I have read the bill a dozen times, and I do not understand the scope and effect of it yet; and I do want to understand it.

The people of our State are as much interested in the purpose of this bill as are those of any State in the Union. I am for the purpose of it, but I say that this bill can not pass in this form, and it would be a misfortune to have it voted down now, when it would not be voted down by reason of the principles involved, but by reason of the complications which are involved in the language of the bill. What we want to do is to overcome a specific wrong. We already have laws against monopoly. Let us enforce those laws.

For that reason, Mr. President, I move that this bill be recommitted, so that there may be an opportunity for every Senator in this body to appear before the committee and offer any amendments he has to offer, and to assist in preparing an intelligent bill. We now have too little time to offer and to explain amendments. We are all opposed to monopoly. We are all determined to put an end to the unjust discriminations and practices of the great packers. We of the West are for this bill so far as it reaches the guilty parties, but we know our stock raisers and our farmers are not guilty. They do not get one-third of the price charged the consumers for the product they raise.

I will not vote for this bill in its present form. I intend to offer an amendment protecting our stock raisers and farmers, and if that amendment is adopted I will vote for the bill.

Mr. ROBINSON. Mr. President, I make the point of order that the motion to recommit is not in order under the unanimous-consent agreement under which the Senate is proceeding, and on that, if the Chair desires to hear me, I will be glad to address the Chair.

The VICE PRESIDENT. The Chair has heretofore ruled on this identical point of order, and under identically the same circumstances, that a motion to recommit is not in order. There was no appeal from the Chair when the question arose before, and the Chair suggests, in order definitely to settle the precedent, an appeal from the present ruling. The Chair stands by the original ruling.

Mr. ROBINSON. A parliamentary inquiry. In the opinion of the Chair, if an appeal should be taken from the decision of the Chair, would the question be debatable?

The VICE PRESIDENT. Until 4 o'clock. The Chair does not think it would be debatable after 4 o'clock.

Mr. SMITH of Georgia. Mr. President, I desire to offer two amendments——

Mr. PITTMAN. Mr. President, can an appeal from the decision of the Chair be made later, or must it be made now?

The VICE PRESIDENT. It must be made now.

Mr. PITTMAN. In accordance with the suggestion of the Vice President, I respectfully appeal from the ruling of the Chair.

Mr. ROBINSON. I ask to be heard briefly on the appeal.

Mr. SMITH of Georgia. I believe I was recognized, and I wish to offer two amendments.

The VICE PRESIDENT. They can be offered at any time. There is no reason why they can not be offered after 4 o'clock.

Mr. SMITH of Georgia. But I can not give any explanation of them later.

The VICE PRESIDENT. The Senate is considering the point of order.

Mr. ROBINSON. Mr. President, on at least two occasions this identical question has been presented to the Senate, the last time on January 15, 1918, when the Senator from Ohio, Mr. Harding, made a point of order, under conditions identically the same as that now existing, that a motion to recommit could not be entertained. The reasons the Chair then gave for sustaining the point of order are as good, in my opinion, as anyone can offer.

The Senate understands, of course, that this question can not be determined upon the merits of the bill in controversy; that it presents purely a question of law, and a decision of the question will in all probability govern the proceedings of the Senate throughout the future. When the question was raised upon the point of order made by the Senator from Ohio, Mr. Harding, the Chair said:

> The Chair may be misaken about it; that would be quite natural; but the present recollection of the Chair is that he ruled that it could not be recommitted to the committee; that that was not a final disposition at all, but the measure would simply go back to the committee and again be reported to the Senate, and that such a course was a violation of the unanimous-consent agreement. That is the Chair's recollection of the ruling he made, although he may be mistaken, and it might be well to take a moment to look it up.

Subsequently the recollection of the Chair was confirmed by an investigation of the precedents.

I find that recently the Senate has recommitted one bill three times to the committee, and if a motion to recommit is in order, the bill might never be finally acted upon, should the ruling of the Chair be reversed. Moreover, Mr. President, I call attention briefly to the language of the unanimous-consent agreement itself, that—

> the Senate will proceed to vote, without further debate, upon any amendment that may be pending, any amendment that may be offered, and upon the bill * * * to its final disposition.

If the bill can be recommitted to-day, reported to-morrow, recommitted again the next day, and so on any number of times, which I believe is possible under the rules of the Senate, then unquestionably to recommit the bill now would not constitute a final disposition of the bill.

The agreement was to vote "upon any amendment that may be pending, any amendment that may be offered," and upon the bill itself, "to its final disposition," and, of course, the legal question that arises is whether a recommittal is a final disposition of the bill.

The VICE PRESIDENT. The hour of 4 o'clock having arrived, the Chair rules that no further debate is in order. The question is, Shall the ruling of the Chair stand as the decision of the Senate?

Mr. SMOOT. On that question I call for the yeas and nays.

The yeas and nays were ordered, and the reading clerk proceeded to call the roll.

Mr. GORE (when his name was called). I have a general pair with the junior Senator from New York [Mr. CALDER]. I do not know how he would vote on the pending question, and therefore withhold my vote. If at liberty to vote, I would vote "yea."

Mr. HENDERSON (when his name was called). I have a general pair with the junior Senator from Illinois [Mr. McCORMICK], who was called from the city last night on account of illness in his family. I am not informed how he would vote on the pending question or on the bill. I have been unable to secure a transfer and therefore withhold my vote.

Mr. KNOX (when his name was called). I have a general pair with the senior Senator from Oregon [Mr. CHAMBERLAIN]. I am informed that the Senator from Montana [Mr. WALSH] has a pair with the junior Senator from New Jersey [Mr. FRELINGHUYSEN], and that it has been arranged upon the votes on the pending bill that our respective pairs shall be paired, and that the Senator from Montana and myself shall be allowed to vote. Am I correct?

Mr. WALSH of Montana. That is correct.

Mr. KNOX. I vote "nay."

Mr. McCUMBER (when his name was called). I have a general pair with the senior Senator from Colorado [Mr. THOMAS]. Not knowing what his vote would be upon the pending question, I withhold my vote.

Mr. MOSES (when his name was called). I have a general pair with the junior Senator from Louisiana [Mr. GAY]. He is absent, and I have arranged to transfer my pair to the senior Senator from Indiana [Mr. WATSON] on all votes upon the pending bill, and I am therefore at liberty to vote. I vote "nay."

Mr. POMERENE (when his name was called). I have a general pair with the senior Senator from Iowa [Mr. CUMMINS]. I am not advised how he would vote on the pending question and therefore withhold my vote. If at liberty to vote, I would vote "yea."

Mr. WALSH of Montana (when his name was called). Referring to the statement made by the junior Senator from Pennsylvania [Mr. KNOX], which expresses my understanding, I feel at liberty to vote notwithstanding the absence of my pair. I vote "yea."

Mr. WILLIAMS (when his name was called). I have a standing pair with the senior Senator from Pennsylvania [Mr. PENROSE]. I understand that if he were present he would vote as I am about to vote, and I therefore consider myself released for this purpose. I vote "nay."

The roll call was concluded.

Mr. GORE. I have been released from my pair previously announced and am therefore at liberty to vote. I vote "yea."

Mr. HARRISON. I have been requested to announce that the Senator from Colorado [Mr. THOMAS] is detained on account of illness in his family, and that the Senator from Oregon [Mr.

CHAMBERLAIN] and the Senator from Delaware [Mr. WOLCOTT] are detained on account of illness.

Mr. CURTIS. I wish to announce that the Senator from New Mexico [Mr. FALL] is paired with the Senator from Rhode Island [Mr. GERRY].

The result was announced—yeas 50, nays 30, as follows:

YEAS—50.

Ashurst	Harrison	McKellar	Smith, Ga.
Borah	Heflin	McNary	Smith, Md.
Capper	Hitchcock	Myers	Smith, S. C.
Culberson	Johnson, Calif.	Nelson	Spencer
Curtis	Johnson, S. Dak.	Norris	Sterling
Dial	Jones, N. Mex.	Overman	Swanson
Fletcher	Jones, Wash.	Owen	Townsend
France	Kellogg	Phelan	Trammell
Glass	Kendrick	Poindexter	Walsh, Mass.
Gooding	Kenyon	Ransdell	Walsh, Mont.
Gore	Kirby	Robinson	Willis
Gronna	La Follette	Sheppard	
Harris	Lenroot	Simmons	

NAYS—30.

Ball	Hale	Page	Stanley
Beckham	Keyes	Phipps	Sutherland
Brandegee	King	Pittman	Underwood
Colt	Knox	Reed	Wadsworth
Dillingham	Lodge	Sherman	Warren
Edge	McLean	Shields	Williams
Elkins	Moses	Smith, Ariz.	
Fernald	New	Smoot	

NOT VOTING—16.

Calder	Frelinghuysen	McCormick	Pomerene
Chamberlain	Gay	McCumber	Thomas
Cummins	Gerry	Newberry	Watson
Fall	Henderson	Penrose	Wolcott

The VICE PRESIDENT. The ruling of the Chair stands as the decision of the Senate. The question is now on the amendment offered by the Senator from Nebraska [Mr. HITCHCOCK].

Mr. REED. On that I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. WADSWORTH. I should like to have the amendment stated.

Mr. LODGE. I ask to have it read.

The VICE PRESIDENT. The amendment offered by the Senator from Nebraska will be read.

The ASSISTANT SECRETARY. Add a new section in the bill at the end of title 3, on page 14, after line 22, which will be section 20, as follows:

SEC. 20. The commission shall also have power to formulate and publish for the use of shippers and packers a classification of live stock for each stockyard market, and this classification shall be known as the Government classification for said market, and in the absence of any special agreement or stipulation to the contrary in any case the prices quoted, the bids made, and the sales of live stock upon said market shall be upon said Government classification.

The commission shall have power at each stockyard to receive and publish bids for live stock from packers and other buyers on Government classification for a week or more in advance, which bids shall bind the bidders to purchase at the prices stated on the days named the number of head of live stock specified according to classification, and which shall entitle said bidders on the date named to preference in purchasing at prices specified up to the amount of live stock named in their advance bids if receipts are sufficient to cover all bids, but if not sufficient, then allotments to be made pro rata among bidders by said commission.

The commission shall one week in advance from day to day notify each common carrier delivering live stock to a stockyard of the approximate number of head of live stock for which advance bids have been received for each particular day and the probable proportion which each common carrier can wisely deliver on each day at said stockyard, based on its average proportion of deliveries in the past.

In the absence of any declaration to the contrary it shall be presumed that all live stock received at any stockyard is sent there under the protection and provisions of this section, but any shipper may expressly provide to the contrary.

The VICE PRESIDENT. The yeas and nays have been ordered, and the Secretary will call the roll.

The reading clerk proceeded to call the roll.

Mr. HENDERSON (when his name was called). Making the same announcement concerning my pair as on the previous roll call, I withhold my vote.

Mr. KNOX (when his name was called). Referring to the statement I made upon the last roll call, I will allow that statement to stand for this and all subsequent roll calls upon the bill, and will vote. I vote "nay."

Mr. McCUMBER (when his name was called). Making the same announcement concerning my pair as on the previous roll call, I withhold my vote.

Mr. POMERENE (when his name was called). Again referring to my pair with the senior Senator from Iowa [Mr. CUMMINS], I am advised that if present his vote would be the same as my own. I therefore feel privileged to vote, and vote "nay."

Mr. WALSH of Montana (when his name was called). Repeating the announcement as to my pair and its transfer made on the last roll call, I vote "nay."

Mr. WILLIAMS (when his name was called). I have a standing pair with the Senator from Pennsylvania [Mr. PENROSE]. As I am unable to secure a transfer of that pair, I withhold my vote.

The roll call was concluded.

Mr. CURTIS. I desire to announce that on this vote the Senator from New Mexico [Mr. FALL] is paired with the Senator from Rhode Island [Mr. GERRY].

Mr. HARRISON. I desire to announce the absence of the Senator from Colorado [Mr. THOMAS] on account of illness in his family, and also that the Senator from Oregon [Mr. CHAMBERLAIN] and the Senator from Delaware [Mr. WOLCOTT] are absent because of illness.

The result was announced—yeas 8, nays 70, as follows:

YEAS—8.

Fletcher	Hitchcock	Kirby	Owen
Gronna	Kendrick	La Follette	Pittman

NAYS—70.

Ashurst	Hale	Moses	Smith, Md.
Ball	Harris	Myers	Smith, S. C.
Beckham	Harrison	Nelson	Smoot
Borah	Heflin	New	Spencer
Brandegee	Johnson, Calif.	Norris	Stanley
Capper	Johnson, S. Dak.	Overman	Sterling
Colt	Jones, N. Mex.	Page	Sutherland
Culberson	Jones, Wash.	Phelan	Swanson
Curtis	Kellogg	Phipps	Townsend
Dial	Kenyon	Poindexter	Trammell
Dillingham	Keyes	Pomerene	Underwood
Edge	King	Ransdell	Wadsworth
Elkins	Knox	Reed	Walsh, Mass.
Fernald	Lenroot	Sheppard	Walsh, Mont.
France	Lodge	Sherman	Warren
Glass	McKellar	Shields	Willis
Gooding	McLean	Simmons	
Gore	McNary	Smith, Ariz.	

NOT VOTING—18.

Calder	Gay	Newberry	Watson
Chamberlain	Gerry	Penrose	Williams
Cummins	Henderson	Robinson	Wolcott
Fall	McCormick	Smith, Ga.	
Frelinghuysen	McCumber	Thomas	

So Mr. HITCHCOCK's amendment was rejected.

Mr. POMERENE. A parliamentary inquiry, Mr. President. Are general amendments now in order?

The VICE PRESIDENT. They are.

Mr. POMERENE. Then, Mr. President, I move to strike out of the bill section 25.

The VICE PRESIDENT. The question is on the amendment proposed by the Senator from Ohio.

Mr. KENYON. I ask for the yeas and nays.

The yeas and nays were ordered, and the reading clerk proceeded to call the roll.

Mr. HENDERSON (when his name was called). Making the same announcement as on previous votes relative to my pair, I withhold my vote.

Mr. McCUMBER (when his name was called). Making the same announcement as on the previous vote, I withhold my vote.

Mr. POMERENE (when his name was called). Again referring to my pair with the senior Senator from Iowa [Mr. CUMMINS], I am advised that if he were present he would vote "nay." If permitted to vote, I should vote "yea." I therefore withhold my vote.

Mr. SIMMONS (when his name was called). On this bill I have a pair with the junior Senator from New York [Mr. CALDER]. I am not able to secure a transfer, and in his absence I withhold my vote. If I were at liberty to vote, I should vote "nay."

Mr. WALSH of Montana (when his name was called). Referring to the statement heretofore made with respect to my pair, I vote "nay."

Mr. WILLIAMS (when his name was called). I have a standing pair with the senior Senator from Pennsylvania [Mr. PENROSE]. I notice that he has not voted. I do not know how he would vote on the pending amendment and therefore withhold my vote.

The roll call was concluded.

Mr. HARRISON. I desire to announce that the Senator from Colorado [Mr. THOMAS] is absent on account of illness in his family, and also that the Senator from Oregon [Mr. CHAMBERLAIN] and the Senator from Delaware [Mr. WOLCOTT] are absent because of illness.

The result was announced—yeas 34, nays 43, as follows:

YEAS—34.

Ball	Hale	Page	Stanley
Beckham	Keyes	Phipps	Sterling
Brandegee	King	Reed	Sutherland
Colt	Knox	Sherman	Underwood
Dial	Lodge	Shields	Wadsworth
Edge	McLean	Smith, Ariz.	Warren
Elkins	Moses	Smith, Ga.	Willis
Fernald	Myers	Smith, Md.	
France	New	Smoot	

NAYS—43.

Ashurst	Harris	Kirby	Ransdell
Borah	Harrison	La Follette	Robinson
Capper	Heflin	Lenroot	Sheppard
Culberson	Hitchcock	McKellar	Smith, S. C.
Curtis	Johnson, Calif.	McNary	Spencer
Dillingham	Johnson, S. Dak.	Nelson	Swanson
Fletcher	Jones, N. Mex.	Norris	Townsend
Glass	Jones, Wash.	Overman	Trammell
Gooding	Kellogg	Owen	Walsh, Mass.
Gore	Kendrick	Phelan	Walsh, Mont.
Gronna	Kenyon	Poindexter	

NOT VOTING—19.

Calder	Gay	Newberry	Thomas
Chamberlain	Gerry	Penrose	Watson
Cummins	Henderson	Pittman	Williams
Fall	McCormick	Pomerene	Wolcott
Frelinghuysen	McCumber	Simmons	

So Mr. POMERENE's amendment was rejected.

Mr. STERLING. Mr. President, I move the following amendment to the bill: On page 2, in lines 5 and 6, I move to strike out the words "live stock commission created by this act" and to insert in lieu thereof the words "Trade Commission," so that it shall read:

The term "commission" means the Federal Trade Commission.

The VICE PRESIDENT. The question is on the amendment proposed by the Senator from South Dakota.

Mr. STERLING. I ask for the yeas and nays on the amendment.

The yeas and nays were ordered, and the reading clerk proceeded to call the roll.

Mr. HENDERSON (when his name was called). Making the same announcement as heretofore as to my pair, I withhold my vote.

Mr. McCUMBER (when his name was called). Making the same announcement as on previous roll calls, I withhold my vote.

Mr. POMERENE (when his name was called). Again announcing my pair with the senior Senator from Iowa [Mr. CUMMINS], I am advised that if he were present and voting he would vote "nay." I, if at liberty to vote, would vote "yea." I withhold my vote.

Mr. SIMMONS (when his name was called). Making the same announcement as before as to my pair and my inability to obtain a transfer, I withhold my vote. If I were at liberty to vote, I should vote "nay."

Mr. WALSH of Montana (when his name was called). Repeating the statement made on previous roll calls, I vote "nay."

The roll call was concluded.

Mr. CURTIS. I desire to announce that the Senator from New Mexico [Mr. FALL] is paired with the Senator from Rhode Island [Mr. GERRY].

Mr. HARRISON. I desire to announce that the Senator from Colorado [Mr. THOMAS] is absent on account of illness in his family; also that the Senator from Oregon [Mr. CHAMBERLAIN] and the Senator from Delaware [Mr. WOLCOTT] are absent, due to illness.

The result was announced—yeas 34, nays 43, as follows:

YEAS—34.

Ball	Hale	Moses	Spencer
Curtis	Heflin	Myers	Sterling
Dial	Jones, Wash.	Nelson	Sutherland
Edge	Kellogg	New	Townsend
Elkins	Keyes	Page	Wadsworth
Fernald	King	Phipps	Warren
Fletcher	Knox	Poindexter	Willis
France	Lenroot	Reed	
Gore	McLean	Smith, Ga.	

NAYS—43.

Ashurst	Harris	McNary	Smith, Ariz.
Beckham	Harrison	Norris	Smith, Md.
Borah	Hitchcock	Overman	Smith, S. C.
Brandegee	Johnson, Calif.	Owen	Smoot
Capper	Johnson, S. Dak.	Phelan	Stanley
Colt	Jones, N. Mex.	Pittman	Swanson
Culberson	Kendrick	Ransdell	Trammell
Dillingham	Kenyon	Robinson	Underwood
Glass	Kirby	Sheppard	Walsh, Mass.
Gooding	La Follette	Sherman	Walsh, Mont.
Gronna	McKellar	Shields	

NOT VOTING—19.

Calder	Gay	McCumber	Thomas
Chamberlain	Gerry	Newberry	Watson
Cummins	Henderson	Penrose	Williams
Fall	Lodge	Pomerene	Wolcott
Frelinghuysen	McCormick	Simmons	

So Mr. STERLING's amendment was rejected.

Mr. WALSH of Montana. Mr. President, an obvious error. On page 3, in line 3, after the word "sale," the words "in commerce" should be inserted. I move that amendment.

Mr. KENYON. That is an error. The words "in commerce" should be there.

The VICE PRESIDENT. The amendment will be stated.

The ASSISTANT SECRETARY. After the words "products for sale," on page 3, line 1, of the original copy of the bill, it is proposed to insert the words "in commerce."

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Montana.

The amendment was agreed to.

Mr. SPENCER. I offer the amendment which I send to the desk.

The VICE PRESIDENT. The amendment will be stated.

The ASSISTANT SECRETARY. On page 13, it is proposed to strike out lines 16, 17, 18, and the first four words of line 19.

The VICE PRESIDENT. What copy has the Senator from Missouri before him?

Mr. SPENCER. Perhaps I have the wrong copy of the bill.

The VICE PRESIDENT. What are the words?

Mr. KENYON. Mr. President, I think that amendment was a committee amendment that was adopted. The Senator would have to ask to reconsider the vote. I can see no objection to the words the Senator has suggested going out, but I suppose that means a reconsideration. The amendment has been adopted.

The VICE PRESIDENT. The entire difficulty is that when there are three or four copies of a bill the Secretary must know to what copy a motion applies.

Mr. KENYON. These words are not in the original bill. They are in a committee amendment that was adopted.

Mr. SPENCER. I can read the words. They are the last sentence of the committee amendment that provides for the accounts which the commission must keep. The words which I move to strike out are found in the printed bill on page 13, beginning with line 16, and read as follows:

If such uniform systems are prescribed and required by the commission, no packer or operator shall keep any accounts, records, or memoranda other than those prescribed or approved by the commission.

The VICE PRESIDENT. Is that what the Senator wishes to strike out?

Mr. SPENCER. Those are the words to be stricken out. If that committee amendment has already been adopted, I inquire whether it may not be necessary to reconsider the adoption of the amendment?

The VICE PRESIDENT. It will be. The Senator from Missouri moves to reconsider the vote whereby the committee amendment was adopted.

The motion to reconsider was agreed to.

The VICE PRESIDENT. The Senator from Missouri now moves to strike out certain words, which will be stated by the Secretary.

The ASSISTANT SECRETARY. It is proposed to strike out the following words:

If such uniform systems are prescribed and required by the commission, no packer or operator shall keep any accounts, records, or memoranda other than those prescribed or approved by the commission.

The VICE PRESIDENT. The question is on the amendment offered by the Senator from Missouri to the amendment of the committee.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. SPENCER. I offer the amendment, which I send to the desk.

The VICE PRESIDENT. The amendment will be stated.

The ASSISTANT SECRETARY. On page 11, line 19, after the word "determine," it is proposed to insert the following words——

Mr. FLETCHER. That must refer to some other amendment. That does not appear in the original print.

Mr. SPENCER. In the other printed copy it is on page 11, line 8, after the word "determine."

The ASSISTANT SECRETARY. On page 11, line 8, in section 13, after the word "determine," it is proposed to insert the following words: "That such ownership or control or interest is not in violation of the purposes of this act, or," so that if amended it will read:

SEC. 13. After two years from the date when this act becomes effective, no packer engaged in commerce shall own or control or have any interest in, directly or indirectly, by community of stock ownership or otherwise, any stockyard, unless the commission shall determine that such ownership or control or interest is not in violation of the purposes of this act, or that such packer has been unable, despite due diligence, to dispose of such ownership or control of or interest in such stockyard, etc.

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Missouri.

The amendment was agreed to.

Mr. STERLING. Mr. President, on page 20, the first 3 lines of subdivision (2) on that page read as follows——

Mr. KENYON. What section is that?

Mr. STERLING. Page 20 of the original print, the first print of the bill.

Mr. KENYON. What section is it? That will enable us to find it.

Mr. STERLING. Section 25, page 20, subdivision (2). The first three lines of the subdivision read as follows:

To furnish the services and facilities of its business on fair and reasonable terms and without unjust discrimination to persons applying for such service and facilities.

Then subdivision (3) repeats the same idea exactly and reads as follows:

To impose only such charges and rates as are reasonable for the service or facility afforded.

I move to strike out subdivision (3).

The VICE PRESIDENT. The amendment will be stated.

The ASSISTANT SECRETARY. It is proposed to strike out subdivision (3) on page 20, which reads as follows:

(3) To impose only such charges and rates as are reasonable for the service or facility afforded.

Mr. GRONNA. Mr. President, I realize that this amendment can not be debated, but I hope it will not be adopted.

The VICE PRESIDENT. The question is on agreeing to the amendment of the Senator from South Dakota.

On a division, the amendment was rejected.

Mr. WADSWORTH. Mr. President, I move to amend the bill by striking out, on page 2 of the original print, line 15, the words "horses, mules, or goats."

Mr. BORAH. What page is it of the other print?

Mr. WADSWORTH. Page 2 of the reprint.

The VICE PRESIDENT. The amendment will be stated.

The ASSISTANT SECRETARY. The paragraph reads:

The term "live stock" means live or dead cattle, sheep, swine, horses, mules, or goats.

Mr. WADSWORTH. I move to strike out the words "horses, mules, or goats," and to insert the word "and" between the words "sheep" and "swine." I do not think it is necessary for every horse auction in the United States to be run by the Government.

Mr. KENYON. I make the point of order that it is past the time for argument.

The VICE PRESIDENT. The point of order is sustained.

The question is on the amendment offered by the Senator from New York.

On a division, the amendment was agreed to.

Mr. WADSWORTH. In order that the bill may be made consistent in this respect, I offer another amendment, and I apologize for having made so much of an argument. On the same page, line 22, I move to strike out the words "horses, mules, or goats," and to insert the word "and" between the words "sheep" and "swine," striking out the comma.

The amendment was agreed to.

Mr. SMITH of Georgia. I move to amend on page 17 by adding at the close of the third line the words "the weight of the," so that it will read:

No such order of the commission shall be modified or set aside by the circuit court of appeals unless it is shown by the packer or operator that the order is unsupported by the weight of the evidence, or was issued, and so forth.

Mr. KENYON. In what section, I will ask the Senator?

Mr. SMITH of Georgia. Section 21. I can not state my reason for offering the amendment.

Mr. KENYON. No; I understand.

On a division, the amendment was agreed to.

Mr. SMITH of Georgia. Now I move to amend, on the same page, in line 22, by striking out the words "appealed from" and adding "or modified order," so that it will read as follows:

If the circuit court of appeals affirms or modifies the order of the commission, its decree shall operate as an injunction to enjoin the packer or operator, and its officers, agents, and employees from further violating the provisions of the order or the modified order.

If the Secretary will read the original provision, the Senate will see the effect of the amendment.

The VICE PRESIDENT. The Secretary will read as requested.

The ASSISTANT SECRETARY. The paragraph reads as follows, beginning on page 17, line 8:

If the court determines that the just and proper disposition of such an appeal requires the taking of additional evidence, the court shall order such additional evidence to be taken before the commission in such manner and upon such terms and conditions as the court may deem proper. The commission may modify its findings as to the facts, or make new findings by reason of the additional evidence so taken, and it shall file such modified or new findings and its recommendations, if any, for the modification or setting aside of its original order with the return of such additional evidence. If the circuit court of appeals affirms or modifies the order of the commission, its decree shall operate as an injunction to enjoin the packer or operator, and its officers, agents, and employees from further violating the provisions of the order.

Then follows the proposed amendment:

or the modified order.

The amendment was agreed to.

Mr. FRANCE. I desire to offer an amendment, which I send to the desk.

The VICE PRESIDENT. The Secretary will report the amendment.

The ASSISTANT SECRETARY. Add a new section, to be known as section 5 and to read as follows:

SEC. 5. The principal office of the commission in the District of Columbia and its places of business outside of the District shall be of the character of open courtrooms to which the public and representatives of the press shall be at all times admitted, and there shall be provisions made for the accommodation of the public and the representatives of the press. The commission shall sit as a court, its business shall at all times be conducted in the open, its records shall be always open to public scrutiny, and its orders, decrees, and findings shall be delivered and promulgated from the bench in open session. It shall be illegal and a presumption of criminal collusion on the part of the commission to enter upon secret sessions with packers or others for the purpose of arriving at a conclusion as to what would be considered by the commission to be an unreasonable charge or rate of service as provided in section 14 of this act.

Any citizen or person, consumer, producer, or packer shall have the privilege of filing a complaint either in person or in writing against any packer or operator, and it shall be the duty of the commission to summon before it for a hearing all interested parties, every such hearing to be in the open as heretofore provided.

The amendment was rejected.

Mr. FRANCE. Mr. President, I offer another amendment.

The VICE PRESIDENT. The Secretary will report the amendment.

The ASSISTANT SECRETARY. At the end of section 21 insert the following proviso:

Provided, however, That any producer, dealer, person, packer, or operator who may have been aggrieved shall have the right in said petition filed with said clerk of the court not only to pray that the commission's order be set aside but to set forth any evidence which might lead to the belief that improper influences had been exerted on the commission or improper decisions had been rendered, and it shall be the duty of the United States district attorney of the district in which such petition may be filed to examine such evidence and submit it, if it seems best, to the Federal grand jury, and the Federal grand jury may bring an indictment against the commission or any member of it in the same manner as against packer, operator, or private citizen for collusion or complicity to avoid the law.

The amendment was rejected.

Mr. PITTMAN. Mr. President, I offer an amendment to be an additional section, section 30, to be added to the pending bill.

The VICE PRESIDENT. The Secretary will report the amendment.

The ASSISTANT SECRETARY. Add a new section to the bill, section 30, as follows:

SEC. 30. None of the provisions of this act shall be construed to include or be binding upon a person whose chief business is the raising of live stock or agricultural products.

Mr. WADSWORTH. On that I ask for the yeas and nays.

The yeas and nays were ordered.

The reading clerk proceeded to call the roll, and Mr. ASHURST answered in the affirmative.

Mr. KENYON. Mr. President, may we not have the amendment stated?

The VICE PRESIDENT. It would be a violation of the rule. The roll call has started.

The reading clerk resumed the calling of the roll.

Mr. HENDERSON (when his name was called). Making the same announcement of my pair as on the previous vote, I withhold my vote.

Mr. McCUMBER (when his name was called). Making the same announcement of my pair as on the previous vote, I withhold my vote.

Mr. POMERENE (when his name was called). Again announcing my pair with the senior Senator from Iowa [Mr. CUMMINS], and not knowing how he would vote on this question, I withhold my vote.

Mr. SIMMONS (when his name was called). Making the same announcement of my pair as on the previous roll call, I withhold my vote.

Mr. WALSH of Montana (when his name was called). Repeating the announcement of my pair and transfer heretofore made, I vote "nay."

Mr. WILLIAMS (when his name was called). I understand that my pair, the senior Senator from Pennsylvania [Mr. PENROSE], if present, would vote "yea" upon the pending amendment. I therefore feel at liberty to vote, and vote "yea."

The roll call was concluded.

Mr. CURTIS. I wish to announce that the Senator from New Mexico [Mr. FALL] is paired with the Senator from Rhode Island [Mr. GERRY].

Mr. HARRISON. I desire to announce the absence of the Senator from Colorado [Mr. THOMAS] on account of illness in his family; also that the Senator from Oregon [Mr. CHAMBERLAIN]

and the Senator from Delaware [Mr. WOLCOTT] are absent due to illness.

The result was announced—yeas 38, nays 37, as follows:

YEAS—38.

Ashurst	Hale	Phelan	Smith, S. C.
Beckham	Heflin	Phipps	Stanley
Colt	Keyes	Pittman	Sterling
Dial	King	Poindexter	Sutherland
Edge	Knox	Reed	Townsend
Elkins	Lodge	Sherman	Wadsworth
Fernald	McKellar	Shields	Williams
Fletcher	Moses	Smith, Ariz.	Willis
France	Myers	Smith, Ga.	
Gore	New	Smith, Md.	

NAYS—37.

Ball	Harris	La Follette	Smoot
Borah	Hitchcock	Lenroot	Spencer
Brandegee	Johnson, Calif.	McNary	Swanson
Capper	Johnson, S. Dak.	Nelson	Trammell
Culberson	Jones, N. Mex.	Norris	Underwood
Curtis	Jones, Wash.	Owen	Walsh, Mass.
Dillingham	Kellogg	Page	Walsh, Mont.
Glass	Kendrick	Ransdell	
Gooding	Kenyon	Robinson	
Gronna	Kirby	Sheppard	

NOT VOTING—21.

Calder	Gerry	Newberry	Warren
Chamberlain	Harrison	Overman	Watson
Cummins	Henderson	Penrose	Wolcott
Fall	McCormick	Pomerene	
Frelinghuysen	McCumber	Simmons	
Gay	McLean	Thomas	

So Mr. PITTMAN's amendment was agreed to.

Mr. SMOOT. I offer the following amendment.

The VICE PRESIDENT. The amendment will be stated.

The ASSISTANT SECRETARY. On page 2, line 20, amend by adding after the word "stockyards," the words "conducted or operated for compensation or profit."

The VICE PRESIDENT. There has been an amendment at that point already agreed to.

Mr. SMOOT. I know; but it is not exactly like the amendment I have offered, and these words ought to go in in connection with it.

The VICE PRESIDENT. The Secretary will state the previous amendment.

The ASSISTANT SECRETARY. The amendment agreed to was to strike out, in line 20, the words "commonly known as stockyards" and insert "maintained and conducted at or in connection with a public market," so that the paragraph reads:

The term "stockyards" means any place, establishment, or facility maintained and conducted at or in connection with a public market, and consisting of pens or other inclosures, etc.

Mr. SMOOT. Will the Senator having the bill in charge——

Mr. KENYON. I object to any debate.

Mr. SMOOT. I am not debating it at all.

Mr. KENYON. I know the Senator is not, but he is trying to do so.

Mr. ASHURST. Mr. President, I call for the regular order.

Mr. GRONNA. The regular order!

Mr. SMOOT. I will modify that to read "or operated for compensation or profit."

The VICE PRESIDENT. The vote by which the previous amendment was agreed to will have to be reconsidered. Without objection, it is reconsidered, and the question is on agreeing to the amendment proposed by the Senator from Utah to the amendment.

The amendment to the amendment was rejected.

The VICE PRESIDENT. The question recurs on the original amendment.

The amendment was agreed to.

Mr. BORAH. At the end of section 5 I offer the amendment which I send to the desk.

The VICE PRESIDENT. The amendment will be stated.

The ASSISTANT SECRETARY. Add at the end of section 5:

That all proceedings of the commission other than conferences between the members thereof will be open to the public.

The amendment was agreed to.

Mr. POMERENE. At the end of the amendment just agreed to I offer the following amendment.

The VICE PRESIDENT. The amendment will be stated.

The ASSISTANT SECRETARY. Add, at the end of the amendment just agreed to, the following:

Upon the taking effect of this act the jurisdiction of the Federal Trade Commission, in so far as it relates to live stock and live-stock products in domestic commerce, shall be terminated.

The amendment was agreed to.

Mr. WADSWORTH. I move to amend the bill, on page 21 of the original print, by striking out lines 15 to 21, inclusive, and I ask that the Secretary may read that paragraph.

The VICE PRESIDENT. The Secretary will read the paragraph proposed to be stricken out.

The ASSISTANT SECRETARY. On page 21 strike out paragraph numbered 1, beginning on line 15, which reads:

(1) Prepare standardized plans and specifications for grounds, buildings, and other facilities suitable for the business conducted or to be conducted by registrants, and to furnish such plans and specifications free of charge to such registrants or to applicants for certificates of registration who have given assurances of undertaking the construction and operation of such buildings and facilities.

The amendment was agreed to.

The VICE PRESIDENT. If there are no further amendments as in Committee of the Whole, the bill will be reported to the Senate.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed and to be read a third time.

The bill was read the third time.

The VICE PRESIDENT. The question is, Shall the bill pass?

Mr. KENYON. On the final passage of the bill, I call for the yeas and nays.

The yeas and nays were ordered, and the reading clerk proceeded to call the roll.

Mr. HENDERSON (when his name was called). Making the same announcement of my pair that I made on the previous vote, I withhold my vote.

Mr. McCUMBER (when his name was called). I have a general pair with the senior Senator from Colorado [Mr. THOMAS]. I am informed by that Senator that he would vote the same way I shall vote upon the final passage of the bill, and I therefore am at liberty to vote. I vote "nay."

Mr. POMERENE (when his name was called). Again announcing my pair with the senior Senator from Iowa [Mr. CUMMINS], I am advised that his vote would be the same as my own, and I am therefore privileged to vote. I vote "yea."

Mr. SIMMONS (when his name was called). I have a pair with the junior Senator from New York [Mr. CALDER]. In his absence, and because of my inability to procure a transfer of that pair, I withhold my vote. If I were at liberty to vote, I should vote "yea."

Mr. SMITH of South Carolina (when his name was called). On this vote I am paired with the Senator from Pennsylvania [Mr. PENROSE]. I therefore withhold my vote.

Mr. WILLIAMS (when his name was called). I have a standing pair with the Senator from Pennsylvania [Mr. PENROSE], but I understand that that pair has been transferred to the Senator from South Carolina [Mr. SMITH], and that I am at liberty to vote. That being the case, I vote "nay."

The roll call was concluded.

Mr. CURTIS. I have been requested to announce the following pairs:

The Senator from New Jersey [Mr. FRELINGHUYSEN] with the Senator from Oregon [Mr. CHAMBERLAIN];

The Senator from New Mexico [Mr. FALL] with the Senator from Rhode Island [Mr. GERRY]; and

The Senator from Indiana [Mr. WATSON] with the Senator from Louisiana [Mr. GAY].

Mr. HARRISON. I desire to announce the absence of the Senator from Colorado [Mr. THOMAS] on account of illness in his family, and also that the Senator from Oregon [Mr. CHAMBERLAIN] and the Senator from Delaware [Mr. WOLCOTT] are absent because of illness.

The result was announced—yeas 47, nays 33, as follows:

YEAS—47.

Ashurst	Hitchcock	McNary	Robinson
Borah	Johnson, Calif.	Myers	Sheppard
Capper	Johnson, S. Dak.	Nelson	Smith, Ga.
Culberson	Jones, N. Mex.	Norris	Spencer
Curtis	Jones, Wash.	Overman	Sterling
Fletcher	Kellogg	Owen	Swanson
Glass	Kendrick	Phelan	Townsend
Gooding	Kenyon	Pittman	Trammell
Gore	Kirby	Poindexter	Walsh, Mass.
Gronna	La Follette	Pomerene	Walsh, Mont.
Harris	Lenroot	Ransdell	Willis
Harrison	McKellar	Reed	

NAYS—33.

Ball	France	Moses	Stanley
Beckham	Hale	New	Sutherland
Brandegee	Heflin	Page	Underwood
Colt	Keyes	Phipps	Wadsworth
Dial	King	Sherman	Warren
Dillingham	Knox	Shields	Williams
Edge	Lodge	Smith, Ariz.	
Elkins	McCumber	Smith, Md.	
Fernald	McLean	Smoot	

NOT VOTING—16.

Calder	Frelinghuysen	McCormick	Smith, S. C.
Chamberlain	Gay	Newberry	Thomas
Cummins	Gerry	Penrose	Watson
Fall	Henderson	Simmons	Wolcott.

So the bill was passed.

Mr. REED. Mr. President, I desire to say a word in explanation of my vote on the bill which has just passed.

As the Senate knows, I have been confined to my home for some time by sickness. During that time the discussion of the bill chiefly took place. Immediately upon the resumption of my duties I was appointed to sit on the committee investigating the coal situation, and therefore missed the debate. A hasty examination of the bill, particularly of section 25, led me to the understanding that the industry concerned would be forced to take out a Federal license in order to do business. After making some remarks this morning, I found, however, on examining the bill, that the provision of the bill for registration is voluntary. That presents an entirely different aspect to the question and does not open the bill to the objection which I urged this morning.

In addition to that, amendments have been adopted to the bill this afternoon which I think very greatly relieve it from the same objection. One of them was the amendment offered by the Senator from Nevada [Mr. PITTMAN], which excludes from the operation of the bill the live-stock raisers and associations and confines the bill to the packers. Another amendment was the one offered by the Senator from Georgia [Mr. SMITH], which gave to the courts the right to interfere in the event a finding was not sustained by the weight of the evidence.

I think, notwithstanding those improvements, that the bill could have been further improved, and I trust it will be further improved. However, I am in accord with the thought that the main purpose of the bill is that of publicity and of laying the facts regarding the trade and business before the public. I am in favor of every measure which will give to the public all the light possible with reference to the packing industry or any other line of business.

AIR MAIL SERVICE (S. DOC. NO. 358).

The VICE PRESIDENT laid before the Senate the following message from the President of the United States, which was read and referred to the Committee on Post Offices and Post Roads and ordered to be printed:

To the Senate and House of Representatives:

I transmit herewith for the consideration of the Congress a special report of the National Advisory Committee for Aeronautics, in which the committee sets forth its views as to the value to the Nation of the air mail service of the Post Office Department, based on broad, general considerations of national interest and policy.

I concur in the opinions expressed by the National Advisory Committee for Aeronautics and indorse its recommendation for the continuance of the air mail service.

WOODROW WILSON.

THE WHITE HOUSE,
24 January, 1921.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by D. K. Hempstead, its enrolling clerk, announced that the House had disagreed to the amendments of the Senate to the bill (H. R. 15130) making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1922, and for other purposes, agreed to the conference asked for by the Senate, and that Mr. DAVIS of Minnesota, Mr. CRAMTON, and Mr. BUCHANAN were appointed managers at the conference on the part of the House.

PETITIONS AND MEMORIALS.

Mr. KNOX presented a petition of sundry citizens of Lancaster Pa., praying for the adoption of legislation to protect Sunday in the District of Columbia from commercialism and safeguard it as a day of rest, which was referred to the Committee on the District of Columbia.

He also presented a petition of sundry citizens of Lancaster, Pa., praying for the adoption of an amendment to the Constitution of the United States providing for the establishment and enforcement of uniform laws for marriage and divorce, which was referred to the Committee on the Judiciary.

He also presented a resolution of the Altoona Real Estate Board, of Altoona, Pa., favoring an amendment to the Federal tax laws, exempting the income from mortgages secured by real estate (except the real estate of Public Utilities Corporations) from a Federal income tax for a period of five years from December 31, 1921, which was referred to the Committee on Finance.

He also presented resolutions of Pride of Allen Council, No. 182, of Allentown; Clover Leaf Council, No. 180, of Tamaqua; and Pride of West Hazleton Council, No. 201, of Hazleton, all in the State of Pennsylvania, favoring restriction of the immigration of aliens for at least two years, which were referred to the Committee on Immigration.

ESTATE OF AGNES INGELS.

Mr. ROBINSON, from the Committee on Claims, to which was referred the bill (S. 4692) for the relief of the heirs of Agnes Ingels, deceased, reported it favorably with an amendment, and submitted a report (No. 715) thereon.

BILLS INTRODUCED.

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. PHELAN:

A bill (S. 4904) granting a pension to W. S. Cooper (with accompanying papers); and

A bill (S. 4905) granting an increase of pension to John J. Rogers (with accompanying papers); to the Committee on Pensions.

By Mr. LODGE (by request):

A bill (S. 4906) to amend the act approved February 7, 1916, entitled "An act to provide for the maintenance of the United States Section of the International High Commission; to the Committee on Foreign Relations.

By Mr. SMOOT:

A bill (S. 4907) granting a pension to Richard A. Norris; to the Committee on Pensions.

By Mr. KING:

A bill (S. 4908) making an appropriation for the purchase of property adjoining the Federal building at Salt Lake City, Utah; to the Committee on Appropriations.

AMENDMENTS TO INDIAN APPROPRIATION BILL.

Mr. SHEPPARD submitted an amendment proposing to appropriate $10,000 for education and civilization of Alabama and Coushatta Indians in Polk County, Tex., intended to be proposed by him to the Indian appropriation bill, which was referred to the Committee on Indian Affairs and ordered to be printed.

Mr. POINDEXTER submitted an amendment proposing to appropriate $44,309.67 for the county of Stevens and $71,460 for the county of Ferry, both in the State of Washington, to compensate those counties in lieu of taxes upon lands allotted to the Colville Indians at the regular rate at which similar lands in those counties, respectively, were assessed for the years 1901 to 1920, inclusive, and in pursuance of law, etc., intended to be proposed by him to the Indian appropriation bill, which was referred to the Committee on Indian Affairs and ordered to be printed.

EMERGENCY TARIFF.

Mr. SMOOT. I ask that the unfinished business may be laid before the Senate.

The VICE PRESIDENT. Is there objection? The Chair hears none.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 15275) imposing temporary duties upon certain agricultural products to meet present emergencies, to provide revenue, and for other purposes.

Mr. CURTIS. I move that the Senate adjourn.

The motion was agreed to; and (at 5 o'clock and 20 minutes p. m.) the Senate adjourned until to-morrow, Tuesday, January 25, 1921, at 12 o'clock meridian.

HOUSE OF REPRESENTATIVES.

MONDAY, *January 24, 1921.*

The House met at 12 o'clock noon.

The House was called to order by Mr. TILSON as Speaker pro tempore.

Rev. John H. Jeffries, of the Ryland Methodist Episcopal Church, Washington, D. C., offered the following prayer:

O Lord, open Thou our lips and our mouths shall show forth Thy praise. Let not the course of the business of this day disturb our trust in Thee. Grant us, O Lord, to pass this day in gladness and peace without stumbling and without sin, that reaching eventide victorious over all temptations we may praise Thee. In the name of our common Lord and Master. Amen.

The Journal of the proceedings of Saturday, January 22, 1921, was read and approved.

DIPLOMATIC AND CONSULAR APPROPRIATION BILL.

Mr. ROGERS, by direction of the Committee on Appropriations, reported the bill (H. R. 15872) making appropriations for the Diplomatic and Consular Service for the fiscal year ending